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PROTECTING INFANTS: ENDING TAXPAYER FUNDING FOR ABORTION PROVIDERS WHO VIOLATE THE LAW

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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[1] The information has been retained in committee files and also is available at *http://docs.house.gov/meetings/IF/IF14/20150917/103957/HHRG-114-IF14-Wstate-YoestC-20150917-SD002.pdf.*

[2] The information has been retained in committee files and also is available at *http://docs.house.gov/meetings/IF/IF14/20150917/103957/HHRG-114-IF14-Wstate-MattoxC-20150917-SD001.pdf.*

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PROTECTING INFANTS: ENDING TAXPAYER FUNDING FOR ABORTION PROVIDERS WHO VIOLATE THE LAW

THURSDAY, SEPTEMBER 17, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HEALTH,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 3:32 p.m., in room 2123, Rayburn House Office Building, Hon. Joseph R. Pitts (chairman of the subcommittee) presiding.

Members present: Representatives Pitts, Guthrie, Barton, Shimkus, Murphy, Burgess, Blackburn, McMorris Rodgers, Lance, Griffith, Bilirakis, Long, Ellmers, Bucshon, Brooks, Collins, Upton (ex officio), Green, Engel, Capps, Schakowsky, Butterfield, Castor, Sarbanes, Matsui, Luján, Schrader, Kennedy, Cárdenas, and Pallone (ex officio).

Also present: Representatives Westerman and DeGette.

Staff present: Clay Alspach, Chief Counsel, Health; Gary Andres, Staff Director; David Bell, Staff Assistant; Sean Bonyun, Communications Director; Leighton Brown, Press Assistant; Karen Christian, General Counsel; Noelle Clemente, Press Secretary; Marty Dannenfelser, Senior Advisor, Health Policy, and Director of Coalitions; Jessica Donlon, Counsel, Oversight and Investigations; Charles Ingebretson, Chief Counsel, Oversight and Investigations; Peter Kielty, Deputy General Counsel; Emily Martin, Counsel, Oversight and Investigations; Katie Novaria, Professional Staff Member, Health; Graham Pittman, Legislative Clerk; Chris Sarley, Policy Coordinator, Environment and the Economy; Adrianna Simonelli, Legislative Associate, Health; Alan Slobodin, Deputy Chief Counsel, Oversight; Heidi Stirrup, Policy Coordinator, Health; Josh Trent, Professional Staff Member, Health; Jessica Wilkerson, Oversight Associate; Jeff Carroll, Democratic Staff Director; Waverly Gordon, Democratic Professional Staff Member; Tiffany Guarascio, Democratic Deputy Staff Director and Chief Health Advisor; Una Lee, Democratic Chief Oversight Counsel; Elizabeth Letter, Democratic Professional Staff Member; Rachel Pryor, Democratic Health Policy Advisor; Timothy Robinson, Democratic Chief Counsel; Samantha Satchell, Democratic Policy Analyst.

Mr. PITTS. The subcommittee will come to order. I apologize for starting late. We were on the floor voting, so have just concluded that. And I note that we have a large audience today.

Today's hearing topic is one that we all have strong feelings about. I respectfully ask that the audience maintain decorum so that we can all hear the testimony of the witnesses and the questions of our members, and I thank you for your courtesy.

The Chair will recognize himself for an opening statement.

OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Earlier this summer, on July 15, 2015, many Americans learned for the first time about some of the torturous and gruesome practices in abortion clinics related to the destruction of unborn babies. In recent weeks, our Nation and our Nation's capital has reengaged in an examination about the purveyors of abortion and their grisly practices.

Abortion supporters cloak their support for abortion under the guise of women's right to choose. Yet they conveniently ignore the choices of thousands of unborn baby girls. How ironic that pro-choice advocates oppose letting unborn babies choose life.

Yet today advances in medical practice and science confirm what we have long known from morality and common sense: Modern medicine treats the unborn child as a patient. Medical pioneers have made great breakthroughs in treating the unborn for generic problems, vitamin deficiencies, irregular heart rhythms, and other medical conditions. Science has shown us earlier and earlier glimpses of tiny, unborn human beings who can feel pain. What must such a baby feel when she is approached by doctors who come to kill rather than to cure?

Anyone who sees the arms and legs of a tiny baby can hardly doubt whether it is a human being. The real question for all of us is whether that tiny human life has a God-given right to be protected by the law, the same right we have.

Abortion is not just about the unborn child. It is about each of us. We cannot diminish the value of one category of human life, whether born or unborn, without diminishing the value of all human life. When we talk about abortion, we are talking about two lives, the life of the mother and the life of the unborn child.

Medicaid, along with CHIP, pays for roughly half of all births in the United States each year. At the same time, Medicaid accounts for more than 15 percent of all healthcare spending in the United States and plays an increasingly large role in our Nation's healthcare system. Medicaid spending accounts for roughly 1 in every 4 dollars in an average State budget.

Today, no Federal funds can be used to perform elective abortions, and yet many in the abortion industry still seek ways to use Government, taxpayer-funded resources to support their business. Some providers of elective abortions bill Medicaid and CHIP for other nonabortion-related healthcare services.

I support efforts to amend the law and give States the discretion to exclude abortion providers from receiving taxpayer funding through Medicaid. States currently have broad authority to exclude from Medicaid and CHIP providers who violate program requirements, including reasons outlined in detail in Federal statute and in State laws. Courts have also upheld the ability of a State to ex-

clude providers suspected of fraud or who are under investigation. One of our witnesses will discuss this in more detail.

Given the factual record, some States have already taken steps to block taxpayer funding for providers, including Planned Parenthood, in light of some unconscionable atrocities, both apparent and documented, from State judicial and enforcement actions.

No State should be forced to continue to include providers in their Medicaid program who commit reprehensible acts, and taxpayers should not be forced to pay for it. The committee wants to ensure States have appropriate flexibility of excluding from their Medicaid programs providers who are suspected of serious violations of Federal law.

I look forward to hearing from our witnesses today.

[The proposed legislation appears at the conclusion of the hearing.]

[The prepared statement of Mr. Pitts follows:]

PREPARED STATEMENT OF HON. JOSEPH R. PITTS

Earlier this summer, on July 15, 2015, many Americans learned for the first time about some of the tortuous and gruesome practices in abortion clinics related to the destruction of unborn babies. In recent weeks, our Nation—and our Nation's capital—has re-engaged in an examination about the purveyors of abortion and their grisly practices.

Abortion supporters cloak their support for abortion under the guise of "woman's right to choose." Yet they conveniently ignore the choices of thousands of unborn baby girls. How ironic that "pro-choice" advocates oppose letting unborn babies choose life.

Yet, today, advances in medical practice and science confirm what we have long known from morality and common-sense. Modern medicine treats the unborn child as a patient. Medical pioneers have made great breakthroughs in treating the unborn for genetic problems, vitamin deficiencies, irregular heart rhythms, and other medical conditions.

Science has shown us earlier and earlier glimpses of tiny unborn human beings who can feel pain. What must such a baby feel when she is approached by doctors who come to kill rather than to cure? Anyone who sees the arms and legs of a tiny baby can hardly doubt whether it is a human being. The real question for all of us is whether that tiny human life has a God-given right to be protected by the law—the same right we have.

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Given the factual record, some States have already taken steps to block State taxpayer funding for providers, including Planned Parenthood, in light of some unconscionable atrocities -both apparent and documented from State judicial and enforcement actions. No State should be forced to continue to include providers in their

Medicaid program who commit reprehensible acts. And taxpayers should not be forced to pay for it.

The committee wants to ensure States have appropriate flexibility of excluding from their Medicaid programs providers who are suspected of serious violations of Federal law. I look forward to hearing from our witnesses today, and I yield to the distinguished vice chairman of the full committee, Mrs. Blackburn.

Mr. PITTS. I yield the balance of my time to the distinguished vice chairman of the full committee, Mrs. Blackburn.

Mrs. BLACKBURN. Thank you Mr. Chairman.

Welcome to the witnesses. We are grateful that you all are here.

In 2002, the Born Alive Infants Protection Act became law. It passed the House on a voice vote. It was in response to troubling ideas that abortionists and pro-abortion activists did not regard infants as legal persons when they were born alive during an abortion. The law is explicit in definition that every infant who is born alive at any stage of development is a person for all Federal law purposes. And yet in 2015 we see evidence that some abortion providers feel that they may interpret this very clear law to suit their own purposes.

At the time the Born Alive Infants Protection Act was being debated on the floor, Senator Boxer said, and I am quoting, "All people deserve protection, from the very tiniest infant to the most elderly among us," end quote. And I could not agree more.

It is clear more must be done to protect the lives of those most vulnerable. It is why I have authorized the Protecting Infants Born Alive Act, which strengthens current law by giving States the authority to exclude providers from Medicaid when they are suspected of violating the law. Furthermore, if convicted, these providers will be excluded from all Federal programs, including Medicaid, Medicare, and CHIP. It is common sense. I look forward to the support of my colleagues.

And I yield back.

Mr. PITTS. The Chair thanks the gentlelady.

I now recognize the ranking member of the subcommittee, Mr. Green, for 5 minutes for his opening statement.

OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Thank you, Mr. Chairman.

And like our chairman, I apologize to our guests for being late, but they don't even let us set the schedule on the House floor.

Unfortunately, instead of using this time to advance legislation that improves our healthcare system, we are here in response to an aggressive smear campaign against Planned Parenthood based on highly edited videos that misrepresent the organization's practices. These two bills are transparent efforts to give politicians power to block women's access to their doctor of choice, jeopardizing the ability of millions of low-income Medicaid beneficiaries to see the provider they trust for their high-quality health care.

Federal law has long protected the ability of Medicare beneficiaries to receive family planning services. These bills fly in the face of a patient's choice and give politicians unchecked power to deny women access to the doctor of their choosing. If enacted, they would allow for unprecedented level of involvement by Government

in family planning decisions of low-income women. This hearing is part of an ongoing onslaught on not just choice, but on access to quality preventative healthcare services for millions of American women.

I am deeply disappointed by the willingness of some of my colleagues to shut down the Government in response to sensational accusations and no evidence of wrongdoing. Efforts to block access to care and defund Planned Parenthood would do nothing more than prevent individuals who rely on these services from getting the care they need. More than 90 percent of what Planned Parenthood does is preventative care, including cervical, breast cancer screenings, family planning services, mostly for women with few resources and incomes below the poverty level.

We should not continue to play politics with women's health. This is real consequences for real people. Using women's health as a political football in order to advance an extreme agenda is nothing new, but this week's efforts reach a new low. We have real challenges that Congress should be spending its time addressing, rather than going after, women's health.

[The prepared statement of Mr. Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN

Good afternoon.

Unfortunately, instead of using this time to advance legislation that improves our healthcare system, we are here in response to the aggressive smear campaign against Planned Parenthood based on highly edited videos that misrepresent the organization's practices.

These two bills are transparent efforts to give politicians power to block women's access to their doctor of choice, jeopardizing the ability of millions of low-income Medicaid beneficiaries to see the provider they trust for high-quality health care.

Federal law has long protected the ability of Medicaid beneficiaries to receive family planning services.

These bills fly in the face of patient choice, and give politicians unchecked power to deny women access to the doctor of their choosing.

If enacted, they would allow for an unprecedented level of involvement by the Government in the family planning decisions of low-income women.

This hearing is part of the ongoing assault on not just choice, but on access to quality, preventative healthcare services for millions of women.

I am deeply disappointed by the willingness of some of my colleagues to shut down the Government in response to sensationalized accusations and no evidence of wrong-doing.

Efforts to block access to care and defund Planned Parenthood will do nothing more than prevent individuals who rely on these services from getting the care they need.

More than 90 percent of what Planned Parenthood does is preventive care—including cervical and breast cancer screenings, and family planning services-mostly for women with few resources and incomes below the poverty line.

We should not continue to play politics with women's health. This has real consequences for real people.

Using women's health as political football in order to advance an extreme agenda is nothing new, but this week's efforts are a new low.

We have real challenges that Congress should be spending its time addressing, rather than going after, women's health.

Mr. GREEN. With that, Mr. Chairman, I would like to yield 1 ½ minutes to my colleague and our ranking member of our O&I Subcommittee, Congresswoman DeGette.

Mr. PITTS. Without objection, the gentlelady is recognized.

Ms. DEGETTE. Thank you very much, Mr. Chairman.

Thank you, Mr. Green.

In 2002, I voted for the Born Alive Act because obviously it is a crime to kill a baby that has been born. But this bill goes far, far beyond that, and this hearing goes far, far beyond that. The bills that we are considering today would redefine the freedom of choice of providers that is so critical to Medicaid's beneficiaries, and it would restrict a beneficiary's ability to seek care from a provider who is only suspected of having violated the provisions of the bill. This violates due process. This violates all of our justice system in this country.

Furthermore, the Democratic staff of the Oversight and Investigations Subcommittee did a complete investigation into the allegations made in these deeply altered videotapes. The conclusion was that this committee has received no evidence to substantiate the allegations that Planned Parenthood is engaged in the sale of fetal tissue for profit. It goes on to say the committee has received no evidence to support the allegations that the fetal tissue was procured without consent, that Planned Parenthood physicians altered the timing, method, or procedure of an abortion solely for the purposes of obtaining fetal tissue, and it goes on.

Mr. Chairman, I would ask unanimous consent to submit that report that we did dated September 9, 2015, into the record.

Mr. PITTS. I would note that the investigation continues, but there is no objection. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Ms. DEGETTE. Thank you very much, and I yield back.

Mr. GREEN. Mr. Chairman, I would like to yield the remainder of my time to Congresswoman Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

For the past few months, Republicans have insisted on a witch hunt based entirely on highly edited, misleading videos, videos that were released by a fraudulent organization that is now facing legal problems in both State and Federal courts. And then, when their own investigation failed to produce a single shred of evidence of wrongdoing by Planned Parenthood, Republicans doubled down and introduced these incredibly harmful bills.

And don't be fooled by the claim that these bills are about protecting infants. It is clear that their true purpose is to eliminate Planned Parenthood. And whether or not you agree with abortion, it is constitutionally protected and a choice that should be only made by women and their doctors, not politicians. But because Republicans can't overturn Roe v. Wade, they try every other way possible to erode this fundamental right. They try to cut off funding to the clinics that provide abortions, criminalize doctors that perform abortions, restrict access for millions of women every year.

Let me just end with a comment by a women from Illinois: "When I was sexually assaulted, I didn't know who to turn to for help. As the trauma I experienced during that event built up, I knew I needed to seek help, and I was encouraged to go to Planned Parenthood, and for $10 received a full health screening and help coping with my trauma." That is what Planned Parenthood is about.

I yield back.

Mr. PITTS. The Chair thanks the gentlelady.

And just as a courtesy, I might mention we have two Members who are not on the Health Subcommittee sitting with us. Mr. Westerman, who was interested in attending, is sitting. He will not participate. But Ms. DeGette, who is a member of the full committee, without objection, will sit and be a part of the hearing.

And at this point the Chair recognizes the chairman of the full committee, Mr. Upton, 5 minutes for his questions.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman.

Every human life deserves a voice, and that is why we are here today. This committee has spent the last couple of months investigating Planned Parenthood and a series of videos that raise important questions about if it or its affiliates are violating existing law. That investigation is ongoing, and we will continue to use the tools in the toolbox available to get to the facts.

In the meantime, there are steps that we can take today to help ensure that the laws, in fact, are being followed. The two bills being discussed today take important steps toward protecting infant lives and ensuring existing laws are being followed. The new vice chair, Marsha Blackburn, and Renee Ellmers have both demonstrated their leadership in authoring these bills to bolster the Born Alive Infants Protection Act and Partial-Birth Abortion Ban Act.

Today, Medicaid, as we know, pays for about half of the births in the U.S. Medicaid is also a significant portion of Planned Parenthood's revenue. And while States have some ability to enforce existing laws under Medicaid, these bills help ensure that States have more of the tools that they need to ban someone who is suspected of taking the life of an innocent baby from the State's Medicaid program.

These are commonsense measures to help ensure laws are being followed. And if healthcare providers break the law, of course they should be banned from Federal health programs. Further, if States suspect providers are violating the law, they should have the ability to ban that provider from Medicaid.

This hearing, these bills, and our ongoing investigation are about ensuring taxpayer dollars support human dignity, respect for all life, and adherence to all Federal laws.

I yield the balance of my time to my colleague from Washington State, Cathy McMorris Rodgers.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Every human life deserves a voice. That's why we are here today. This committee has spent the past nearly two months investigating Planned Parenthood and a series of videos that raise important question about if it or its affiliates are violating existing law. That investigation is ongoing and we will continue to use every tool available to get to the facts.

In the meantime, there are steps we can take today to help ensure that the laws are being followed.

The two bills being discussed today take important steps toward protecting infant lives and ensuring existing laws are being followed. Committee Vice Chairman Marsha Blackburn and Rep. Renee Ellmers have both demonstrated their leadership in

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These are commonsense measures to help ensure laws are being followed. If healthcare providers break the law, of course they should be banned from Federal health programs. Further, if States suspect providers are violating the law, they should have the ability to ban that provider from Medicaid.

This hearing, these bills, and our ongoing investigation are about ensuring taxpayer dollars support human dignity, respect for all life, and adherence to all Federal laws.

Mrs. MCMORRIS RODGERS. Thank you, Mr. Chairman.

I want to thank the committee for their work in advancing the cause of life, for Vice Chairman Blackburn's work introducing H.R. 3494, the Protecting Infants Born Alive Act, and for Congresswoman Ellmer's work on her legislation to prevent providers acting in contravention of the partial-birth abortion ban from getting tax dollars through Medicaid.

It has now been 2 months since the first undercover video surfaced, and the public concern has not subsided. These videos challenge all of us as legislators and as human beings to reflect and to work towards better protections for women, children, and families.

Today, the President promised that he would veto a bill that says babies that survive an abortion do not deserve life-saving care. It is unthinkable to me that we live in a country where we let living, breathing babies die simply because they were born during an abortive procedure. And the President doesn't want to just not let this happen, he is actively opposing efforts to save babies that were born alive.

This is a radical, extreme departure from what I know to be right. And I am grateful for this committee's work on this important issue and for my colleagues' important work here today.

And I would like to yield to the lady from North Carolina, Mrs. Ellmers.

Mrs. ELLMERS. Thank you to my colleague from Washington.

And thank you to the panel for being here today for this very important hearing.

I thank the chairman for holding this important hearing.

We are here today to talk about protecting the life of the unborn and clarifying States' ability in their Medicaid programs to work with qualified providers. The legislation I have put forward provides States with greater clarity with respect to excluding those bad actors that perform partial-birth abortions.

Democrats have argued that the bills before us today and the bills on the floor would harm women's access to health care. This is false. As a nurse, I know these bills would protect the unborn, respect taxpayers, and preserve access to health care for millions of women.

If Planned Parenthood funding is put on hold or a State takes action against a clinic, women can still access care. Federally funded qualified healthcare centers provide healthcare services for over 22 million Americans. Planned Parenthood only provides services

for 2.7 million individuals, only a portion of whom are women. And the only services Planned Parenthood offers that Federally qualified health centers do not is abortion. Yet health centers provide more types of important healthcare services than Planned Parenthood does.

Today and tomorrow we are not decreasing access for women. We are talking about legislation to protect the lives of the youngest and most vulnerable among us, babies, who have no voice to speak in their own defense.

Thank you, Mr. Chairman, and I yield back the remainder of this time.

Mr. PITTS. The Chair thanks the gentlelady and now recognizes the ranking member of the full committee, Mr. Pallone, 5 minutes for his statement.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman.

It is a real shame that we are here today to continue what is nothing more than a Republican assault on women's rights. I had hoped that our committee could rise above the fray, that we would not use misleading and unsubstantiated videos by antichoice extremists to attack Planned Parenthood, an organization who is responsible for providing care to millions of women across the Nation.

This concerted effort by Republicans under the guise of falsified videos is not about strengthening current law. It is about restricting access to women's health care. And if Republicans continue down this path, it will lead to a Government shutdown.

Make no mistake, Republican policies under consideration here today would roll back the clock on longstanding provider choice protections that allow a woman to see a doctor that she trusts. Their end goal is to eliminate a woman's constitutional right to choose.

These proposals will have an immediate and chilling effect on access to care. They would give States the unprecedented ability to unilaterally eliminate providers from State Medicaid programs and eliminate providers from all Federal health programs wholesale based purely on unsubstantiated allegations, and that means suspicion alone.

With the attempted efforts by States like Indiana and Louisiana, this will surely give credence to their actions, and this is not the American way. Like abortion, due process is a fundamental right.

I can't stand by and allow this committee and this Congress to support a witch hunt against Planned Parenthood, and I will not support undue, unconstitutional Government intervention into a women's personal decisions with her doctor. Republicans must end this extreme agenda to roll back the clock on women's rights.

I have, I think, about 3 minutes left, Mr. Chairman. I would like to split that between Representative Matsui and Representative Capps. So I will yield first to Representative Matsui.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Mr. Chairman, it's a real shame that we are here today to continue what is nothing more than a Republican assault on women's rights. I had hoped that our committee could rise above the fray. That we would not use misleading and unsubstantiated videos by anti-choice extremists to attack Planned Parenthood—an organization who is responsible for providing care to millions of women across the Nation.

This concerted effort by Republicans, under the guise of falsified videos, is not about strengthening current law, it's about restricting access to women's health care and if Republicans continue down this path, it will lead to a Government shutdown.

Make no mistake, Republican policies under consideration here today would roll back the clock on longstanding provider choice protections that allow a woman to see the doctor that she trusts. Their end goal is to eliminate a women's constitutional right to choose.

These proposals will have an immediate and chilling effect on access to care. They would give States the unprecedented ability to unilaterally eliminate providers from State Medicaid programs and eliminate providers from all Federal health programs wholesale—based purely on unsubstantiated allegations—that means suspicion alone. With the attempted efforts by States like Indiana and Louisiana, this will surely give credence to their actions. This is not the American way—like abortion, due process is a fundamental right.

I cannot stand by and allow this committee and this Congress to support a witch hunt against Planned Parenthood. And I will not support undue, unconstitutional, Government intervention into a woman's personal decisions with her doctor. Republicans must end this extreme agenda to roll back the clock on women's rights.

I yield 1 minute to Rep. Matsui.

Ms. MATSUI. I thank the gentleman for yielding to me.

The hearing today is looking for ways to deny low-income women and families access to health services by excluding Planned Parenthood from the Medicaid program. The termination of Medicaid funding for Planned Parenthood would create a serious deficiency in women's health providers across our country.

Medicaid serves nearly 12 million Californians, and Planned Parenthood provides services to nearly 1 million people at 117 health centers in California alone. Defunding Planned Parenthood would leave millions in California and across the country without access to essential health services. We should not allow politicians to deny a woman access to health care and to infringe upon her right to make decisions about her own body.

Even more appalling is the idea of the Government infringing upon these rights, specifically for low-income women. That is not right. Our colleagues would deny women's health and Medicaid services because they don't like Planned Parenthood. They are even threatening to shut down the Government in order to advance these extreme views.

I stand in opposition to these bills. I urge my colleagues to put aside partisan politics and refocus on efforts to expand and improve programs that our constituents rely upon.

And I yield to Representative Capps.

Mrs. CAPPS. Thank you for yielding.

Mr. Chairman, I must say I am disappointed in this committee. I am disappointed that here we have worked so hard this year to find common ground and compromise for the American people. We are now succumbing to the political theater that has taken over the rest of Congress.

The legislation we are being asked to considered is supposedly in response to heavily altered, deceptive videos that try to cast a shadow over one of the Nation's most trusted women's healthcare

providers. But as our colleague on the Oversight Committee has testified, that committee has not found any evidence of wrongdoing, and without any basis in reality, we are still here considering bills in search of a problem.

In my years as a nurse in the public school system, I worked so closely with teen parents whose lives and education were disrupted by an unplanned pregnancy. These young mothers and students still had such promise, but now they were faced with the difficult role of balancing their responsibilities as parents and students, often limiting their opportunities.

We know it doesn't have to be this way. Comprehensive sex education and access to a wide range of birth control options, this is what Planned Parenthood brings to our communities, and they are exactly the types of education and interventions that prevent unintended pregnancies and the need for abortion in the first place.

These bills before us would end these important services in our communities all for political gain. It is unacceptable. We need to stop being distracted and get this committee back to work on real issues facing this country.

I yield back to my colleague from New Jersey.

Mr. PALLONE. I yield back, Mr. Chairman.

Mr. PITTS. The Chair thanks the gentleman.

As usual, all the opening statements of the members will be put into the record if you submit them in writing.

And at this point, we will go to our witnesses. Let me introduce them in the order that they will present.

First of all, thank you for coming. We appreciate you coming to present testimony today. And on our panel we have first Dr. Charmaine Yoest, president of Americans United for Life.

Welcome.

Then Mr. Casey Mattox, senior counsel for Alliance Defending Freedom. And finally Judy Waxman, an attorney.

So you will be each be given 5 minutes to summarize your testimony. Your written testimony will be part of the record. But you will be recognized for 5 minutes. And you will have a series of lights. The green will stay on for 4 minutes. And then, when the red comes on, that is the time for you to conclude.

So at this point the Chair recognizes Dr. Yoest for 5 minutes for her opening statement.

STATEMENTS OF CHARMAINE YOEST, PH.D., PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICANS UNITED FOR LIFE; M. CASEY MATTOX, SENIOR COUNSEL, ALLIANCE DEFENDING FREEDOM; AND JUDY WAXMAN, ATTORNEY

STATEMENT OF CHARMAINE YOEST

Dr. YOEST. Thank you, Chairman Pitts and members of the committee, for inviting me to testify on behalf of Americans United for Life, the legal architects of the pro-life movement.

The videos released by the Center for Medical Progress, which document senior-level Planned Parenthood staff callously discussing its practice of harvesting the organs of aborted babies in exchange for money, are deeply troubling. We have previously sub-

mitted a legal analysis of the videos to the Energy and Commerce Committee detailing six potential felonies shown on the videos.

Today, I will focus on three issues that have received less attention to date, specifically Planned Parenthood's involvement in killing infants born alive after an abortion, performing illegal partial-birth abortions, and coordinating potentially unethical and illegal organ and body part harvesting at the corporate level.

The flagrant disregard for both life and law at Planned Parenthood that the videos depict is, unfortunately, not surprising. One of AUL's primary functions is promoting meaningful legislative protections for all human life, including laws to protect infants born alive after an abortion and health and safety standards. Yet Planned Parenthood regularly and publicly fights against these commonsense laws.

The videos provide insight into why Planned Parenthood desperately fights against lawful standards, even protections for babies born alive, like it recently did in Colorado. In one Colorado video, Dr. Savita Ginde, who is the vice president and medical director of Planned Parenthood of the Rocky Mountains, remarked, quote, "If someone delivers before we get to see them for a procedure, then they are intact. But that is not what we go for."

The videos raise credible concern that babies are regularly surviving an abortion, providing probable cause for investigating possible violations of the Federal Born Alive Infant Protections Act. Multiple people throughout the videos refer to the delivery of an intact specimen. For most of us, that is a baby, begging the question, Was that child born alive?

In multiple instances throughout the videos, that appears to be true. For example, Dr. Ben Van Handel, executive director of Novogenix Laboratories, notes: "There are times when after the [abortion] Procedure is done that the heart is actually still beating." Cate Dyer, CEO of StemExpress, says intact babies are common. Quote: "If you had intact cases, which we have done a lot, we sometimes ship those back to our lab in its entirety."

The videos also provide probable cause to investigate whether Planned Parenthood violates the Federal prohibition of partial-birth abortion in order to harvest more usable baby organs. It is important to note that Planned Parenthood actively opposed the Federal ban on partial-birth abortion and unsuccessfully tried to have it struck down in the courts.

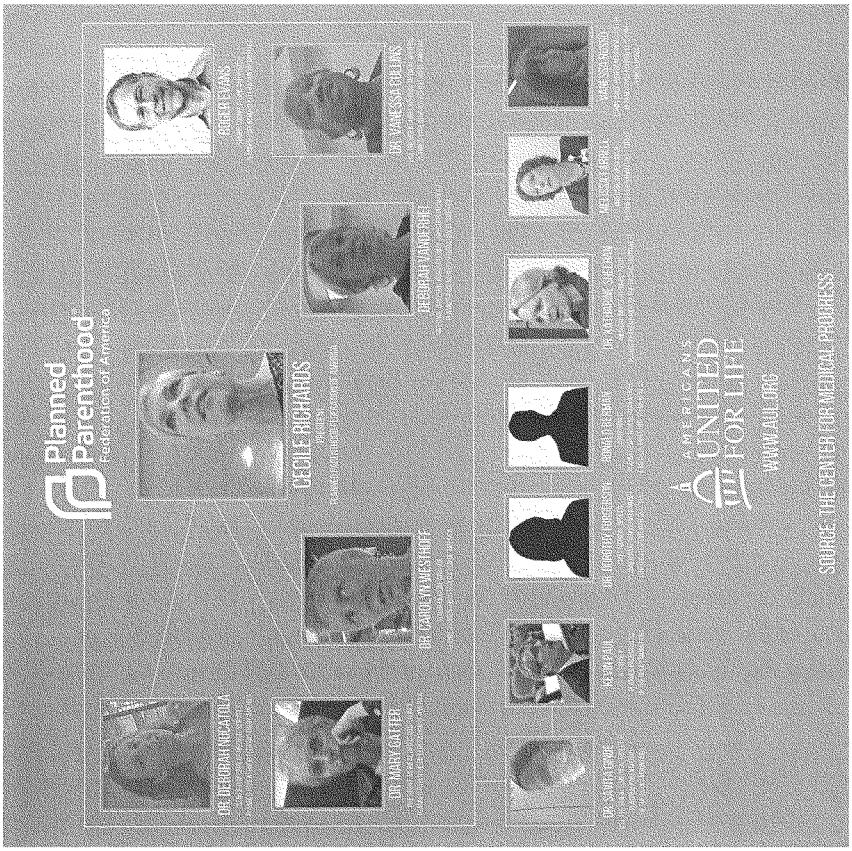
Even so, Dr. Deborah Nucatola, who is the senior medical director of corporate Planned Parenthood, defiantly dismisses the Federal law, describing it as, quote, "up to interpretation," end quote, for abortionists like herself. Consider her description about, quote, "steps that can be taken to try to ensure," end quote, procurement of brain tissue. The abortion process she describes, deliberately changing the baby to breach presentation, has a very troubling similarity to the description of the illegal partial-birth abortion procedure.

And finally, the videos document a nationwide network of affiliates in close communication with and endorsement from the corporate headquarters of Planned Parenthood. As an organization, Planned Parenthood's enterprise liability is illustrated by the knowledge and complicity of its senior-level staff who set and direct

policy. Dr. Nucatola stated multiple times that the legal department at Planned Parenthood was well aware of the harvesting and selling of infant body parts by affiliates but advised against issuing written national guidelines regarding the practice. Dr. Ginde made similar statements.

In fact, as this chart demonstrates, the undercover videos show that the scandal is extensive and reaches the highest levels of Planned Parenthood.

[The information follows:]


Planned Parenthood
Federation of America
DR. DEBORAH NUCATOLA
DR. MARY GATTER
DR. CAROLYN WESTHOFF
UECHE RICHARDS
DEBORAH DINAPOLI
DR. VANESSA COLLINS
DOLORES VIVAS
DR. SANDY LEWIS
ASHA VELA
DR. DOROTHY CHEREONTE
DR. ANTHONY SCELZA
CELESTE CORTEZ
VANESSA VIVAS
AMERICANS
UNITED
FOR LIFE
WWW.AUL.ORG
SOURCE: THE CENTER FOR MEDICAL PROGRESS

Dr. YOEST. For example, the videos include discussions with corporate Planned Parenthood's senior medical director, the president of Planned Parenthood's Medical Directors' Council, the vice president and medical director of Planned Parenthood Rocky Mountain, which is one of their largest affiliates, and the national director for Planned Parenthood's Consortium of Abortion Providers.

In conclusion, on behalf of Americans United for Life, I encourage you to take two legislative responses as a beginning. First, redirect the tax dollars that presently support Planned Parenthood to true healthcare providers not plagued by scandal. This abortion giant receives over $1.25 million per day—per day—in Government funding. We support the proposals to address Medicaid funding that is subsidizing Planned Parenthood because Americans should not be forced to fund the Nation's number one abortion provider.

And second, strengthen the Federal Born Alive Infant Protection Act with criminal penalties to ensure meaningful enforcement of the most basic human right to life for these infants who survive attempted abortions.

Additionally, hold abortion workers to their legal duty to report crimes to law enforcement. Planned Parenthood cannot be permitted to operate while violating laws that protect human rights. Having shown and demonstrated that it cannot resist the financial incentive for delivering intact babies to harvest their organs, Planned Parenthood cannot be allowed to continue their inhumane practices unchecked.

And let me conclude by saying thank you for addressing this very important issue and holding this hearing.

[The prepared statement of Dr. Yoest follows:][1]

[1] Additional information submitted by Dr. Yoest has been retained in committee files and also is available at *http://docs.house.gov/meetings/IF/IF14/20150917/103957/HHRG-114-IF14-Wstate-YoestC-20150917-SD002.pdf.*

TESTIMONY OF
DR. CHARMAINE YOEST, PRESIDENT AND CEO
AMERICANS UNITED FOR LIFE
BEFORE THE UNITED STATES HOUSE COMMITTEE ON ENERGY AND COMMERCE SUBCOMMITTEE ON HEALTH
HEARING ON "PROTECTING INFANTS: ENDING TAXPAYER FUNDING FOR ABORTION PROVIDERS WHO VIOLATE THE LAW"

SEPTEMBER 17, 2015

Thank you, Chairman Pitts and members of the Committee, for inviting me to testify on behalf of Americans United for Life (AUL), the legal architects of the pro-life movement and the oldest national pro-life public-interest law and policy nonprofit organization. Our vision at AUL is a nation where everyone is welcomed in life and protected by law. We have been committed to defending human life through vigorous judicial, legislative, and educational efforts since 1971, and we have been involved in every life-related case before the United States Supreme Court including *Roe v. Wade*.[1]

The viral videos released by the Center for Medical Progress, which document senior-level Planned Parenthood staff throughout the nation callously discussing its practice of harvesting the organs of aborted babies in exchange for money, are deeply unsettling. Caught on camera, Planned Parenthood's crass commoditization of the lives of the unborn has awakened the conscience of all across the country.

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[1] 410 U.S. 113 (1973).

Tragic and difficult to watch, the flagrant disregard for both life and law at Planned Parenthood that the videos depict is unfortunately not surprising. Planned Parenthood leads the abortion industry not only in "volume" of abortions but also in opposing any laws that may affect its abortion business and profits.

Of particular concern, Planned Parenthood has a track record of opposing partial-birth abortion bans as well as protections for infants who are born alive after a failed abortion attempt.

States should be permitted to withdraw or deny Medicaid funding to individuals and entities that violate the letter and spirit of these widely supported laws against infanticide. The proposals introduced by Rep. Ellmers and Rep. Blackburn are a critical first step towards a solution to safeguard the integrity of the Medicaid program, the integrity of the medical profession, and the lives of our most vulnerable young Americans. Further, AUL strongly recommends that the federal *Born Alive Infant Protection Act* be strengthened with criminal penalties to ensure meaningful enforcement of the most basic human right to life for these infants who survive attempted abortions. Abortion workers need to know that it is their ethical and legal duty to report violations to law enforcement.

The Center for Medical Progress' videos may be the impetus for the important discussion happening in the Congress today. But my testimony demonstrates that these videos are further evidence of corporate-wide malfeasance at Planned Parenthood Federation of America and its affiliates.

I. PLANNED PARENTHOOD HAS A TRACK RECORD OF VIGOROUSLY OPPOSING PROTECTIONS FOR INFANTS BORN ALIVE.

Infants born alive—at any stage of development— after an attempted induced abortion are persons under federal law. **1 U.S.C. §8.**

In 2002, Congress passed the *Born Alive Infant Protection Act* (1 U.S.C. §8) by a resounding voice vote in the U.S. House of Representatives, and 98-0 in the U.S. Senate. All Senate Democrats were present for that vote, and all of them—including Senators Hillary Clinton, Ted Kennedy, Barbara Boxer, and John Kerry—voted in favor of the bill. On the Senate floor, Sen. Boxer voiced her strong support for the bill, exclaiming, "Who would be more vulnerable than a newborn baby?" She continued, stating "all of our people deserve protection, from the very tiniest infant to the most elderly among us."[2]

Just last week, in a hearing held in the House Committee on the Judiciary, abortion "rights" supporter Rep. Jerry Nadler (D-NY) exclaimed, "anyone who kills a child outside—that has been born outside the womb, anyone who stands idly by and does not help it survive is guilty of murder or manslaughter, period, no questions asked."[3]

Just last week, the House Committee on the Judiciary heard testimony from two women who survived abortions.[4] These remarkable women, Melissa Ohden and Gianna Jessen, are living

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[2] Congressional Record, S7062-S7064, June 28, 2001.
[3] Video footage of the hearing is available at https://www.youtube.com/watch?t=4783&v=M_gAyNhnGz8. Rep. Nadler's quoted remarks begin at 1:19:28.
[4] The written testimony of Ms. Gianna Jessen is available at http://judiciary.house.gov/_cache/files/889e0f37-2d07-4ec1-919c-6006b0897cb3/gianna-jessen-testimony.pdf. The written testimony of Ms. Melissa Ohden is available at http://judiciary.house.gov/_cache/files/38cc6128-84f3-4752-9c57-438096d3e3bd/melissa-ohden-testimony.pdf.

proof that some children survive the abortions that were intended to end their lives. These women are alive and thriving today because they, mercifully, were not abandoned after the failed abortion. Melissa testified that in her work as the Founder of The Abortion Survivor's Network "I have had contact with 203 other abortion survivors."

Yet Planned Parenthood publicly fights against obligations to provide care for the untold numbers of infants like Melissa and Gianna who are born alive after an attempted abortion.

For example, in 2013, a lobbyist for Planned Parenthood affiliates in Florida testified against the state Born Alive Infants Protection Act.[5] When asked by Rep. Jim Boyd "[i]f a baby is born on a table as a result of a botched abortion, what would Planned Parenthood want to have happen to that child that is struggling for life?" Planned Parenthood's lobbyist shockingly replied "[w]ell, we believe that any decision that's made should be left up to the woman, her family, and the physician."

In a follow-up question, Rep. Daniel Davis repeated the concern to Planned Parenthood's lobbyist. "What happens in a situation where a baby is alive, breathing on a table, moving? What do your physicians do at that point?" he asked. The lobbyist, there on behalf of Planned Parenthood to testify against the bill, replied "umm, I do not have that information. I am not a physician, I am not an abortion provider. So I do not have that information."

Another legislator, Rep. Jose Oliva, asked again about the fate of abortion survivors: "You stated that a baby born alive on a table as a result of a botched abortion that that decision should be left

[5]Video footage of the hearing is available at https://www.youtube.com/watch?t=6&v=qEv1afKaLhA.

to the doctor and the family. Is that what you're saying?" Planned Parenthood's lobbyist again reiterated "[t]hat decision should be between the patient and the health care provider."

Rep. Olivia then remarked "I think that at that point the patient would be the child struggling on the table, wouldn't you agree?" The Planned Parenthood lobbyist replied "[t]hat's a very good question. I really don't know how to answer that."

Planned Parenthood's vocal opposition to a law that would protect these infants it failed to kill during an abortion provides a conspicuous answer to the question. Earlier this year, Planned Parenthood similarly testified against a bill that would have provided protections for infants born alive in Colorado.

The videos released by the Center for Medical Progress provide insight into why Planned Parenthood vehemently opposes laws that require basic, compassionate care—laws that forbid standing idly by while an infant born alive struggles for her life. Comments made by employees of Planned Parenthood and tissue procurement companies raise credible concerns that many infants are born alive after an attempted induced abortion at Planned Parenthood.

Asked "is there still circulation in the heart once you isolate it?" Dr. Ben Van Handel, Executive Director, Novogenix Laboratories LLC replied: "**So you know there are times when after the [abortion] procedure is done that the heart actually is still beating**."[6]

[6] Dr. Van Handel's comments are featured in the Human Capital documentary web series, Episode 3: Planned Parenthood's Custom Abortions for Superior Product *available* at http://www.centerformedicalprogress.org/human-capital/documentary-web-series/.

Planned Parenthood of the Rocky Mountains, Vice President and Medical Director, Dr. Savita Ginde remarked that women sometimes deliver intact babies before Planned Parenthood is able to dismember them. "**Sometimes, we get- if someone delivers before we get to see them for a procedure, then they are intact**, but that's not what we go for."[7]

That women scheduled for abortions are delivering "intact babies" is confirmed by the experience of Perrin Larton, Procurement Manager for Advanced BioScience Resources (ABR). "I literally have had women come in and go in the OR and they're back out in 3 minutes and I'm going 'what's going on?' '**Oh yeah. The fetus was already in the vaginal canal whenever we put her in the stirrups it just fell out**.'"[8]

Planned Parenthood of the Gulf Coast, Ambulatory Surgical Center Director, Tram Nguyen explained multiple times that babies are delivered intact at Planned Parenthood[9]:

- "It varies by gestation, **sometimes they come out really intact**."
- "So it all depends, **sometimes like I said, they come out really intact**."
- "**We can never intend to complete the procedure intact- you can't intend to, but it happens.**"

Cate Dyer, CEO, StemExpress, LLC, appears to confirm that intact babies are a common experience: "[i]f you had **intact cases, which we've done a lot**, we sometimes ship those back to our lab in its entirety."[10]

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[7] Full footage and transcripts for each interview with Planned Parenthood's employees are available at http://www.centerformedicalprogress.org/cmp/investigative-footage/.
[8] Perrin Larton's comments are featured in the Human Captial documentary web series, Episode 3: Planned Parenthood's Custom Abortions for Superior Product *available* at http://www.centerformedicalprogress.org/human-capital/documentary-web-series/.
[9] Full footage and transcripts for each interview with Planned Parenthood's employees are available at http://www.centerformedicalprogress.org/cmp/investigative-footage/.

The testimony of Holly O'Donnell, a former procurement technician for StemExpress, LLC, confirms the necessity of a full-scale investigation into the failure to provide care for infants born alive. She describes the harrowing experience of procuring a brain from a baby whose heart was beating after an attempted abortion:

> This is the most gestated fetus and the closest thing to a baby I've ever seen… and **she taps the heart and it starts beating**… I knew why that was happening, the nodes were still firing and **I don't know if that means it's technically dead or it's alive**. It had a face, it wasn't completely torn up. Its nose was pronounced. It had eyelids. … **Since the fetus was so intact she said 'ok, well, this is a really good fetus and it looks like we can procure a lot from it. We're going to procure brain.**[11]

With this kind of whistleblower testimony, Congress must respond. The proposal introduced by Rep. Blackburn represents an important first step. Americans should not be forced to continue to fund individuals and entities that run an inhumane business of infanticide.

Further, steps are necessary to truly ensure the enforcement of the most basic human right to life for these infants who survive attempted abortions. Without criminal penalties or other enforcement mechanisms, unborn children born during abortions face a bleak outlook. The federal *Born Alive Infant Protection Act* needs criminal penalties, and abortion workers need to

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[10] Full footage and transcript for the interview with Cate Dyer is available at http://www.centerformedicalprogress.org/cmp/investigative-footage/.
[11] Holly O'Donnell's testimony is featured in the documentary web series, "Human Captial," which is available at: http://www.centerformedicalprogress.org/human-capital/documentary-web-series/.

know that they can report violations to law enforcement—in fact, it is their ethical and legal duty to do so.

II. PLANNED PARENTHOOD IS A KNOWN PROPONENT OF PERFORMING PARTIAL-BIRTH ABORTIONS.

Federal law prohibits knowingly performing a partial-birth abortion. **18 U.S.C. § 1531**.

The *Partial Birth Abortion Ban Act of 2003* was enacted with strong bipartisan support in both the House[12] and Senate.[13] In 2007, against the protest of Planned Parenthood, the United States Supreme Court upheld the commonsense, common-ground federal legislation in *Gonzales v. Carhart*.[14]

The Supreme Court explained that "[t]here can be no doubt the government 'has an interest in protecting the integrity and ethics of the medical profession.'"[15]

The Court explained that Congress had fairly concluded that "specific regulation" was necessary to ban abortions that involve the partial delivery of a living baby. Partial-birth abortion "implicates additional ethical and moral concerns that justify a special prohibition."[16] Citing to the Congressional Findings, the Court held that Congress was justified in proscribing an abortion procedure with a "disturbing similarity" to infanticide:

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[12] *See* http://clerk.house.gov/evs/2003/roll530.xml
[13] *See* http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00402
[14] 550 U.S. 124 (2007).
[15] *Id.* at 157.
[16] *Id.* at 158.

> "Congress determined that the abortion methods it proscribed had a 'disturbing similarity to the killing of a newborn infant,' Congressional Findings ¶ (14)(L), and thus it was concerned with 'draw[ing] a bright line that clearly distinguishes abortion and infanticide,'"¶ (14)(G).[17]

As with the federal protections for infants born alive, *life*, not "viability," is the relevant marker for protecting a child who is mere inches away from birth from being killed in a partial-birth abortion.

Planned Parenthood's brazen public opposition to the federal and state laws restricting its use of partial-birth abortion predates the now-viral videos released by the Center for Medical Progress.

While the infamous late-term abortionist Leroy Carhart may be memorialized as the named challenger to the law, it bears remembering that Planned Parenthood Federation of America (PPFA) along with several of its Planned Parenthood affiliates also challenged this legal restraint to its ability to run its business in a "disturbingly similar" fashion to infanticide.[18]

In that case, *Gonzales v. Planned Parenthood Federation of America*, Americans United for Life represented the American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG), Senator Tom Coburn, M.D., Representative Michael Burgess, M.D., Representative Phil Gingrey, M.D., Representative Dave Weldon, M.D., C. Everett Koop, M.D., ScD., Edmund D. Pellegrino, M.D. in an *amicus curiae* filed brief before the Supreme Court. Our brief countered

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[17] 550 U.S. 124, 158 (2007).

[18] *Gonzales v. Carhart* was decided together with 05-1382, *Gonzales, v. Planned Parenthood Federation of America, Inc., et al.*, on certiorari to the United States Court of Appeals for the Ninth Circuit.

false claims presented by the abortion industry to preserve its practice of infanticide, detailing how partial-birth abortions are not "the safest medical option" and are never "medically necessary."[19] The gruesome and inhumane partial-birth abortion procedure benefits neither mothers nor babies.

The videos released by the Center for Medical Progress confirm Planned Parenthood's continued opposition to any constraints on its infanticide-like business. Specifically, comments made by Dr. Deborah Nucatola, Senior Medical Director of Planned Parenthood Federation of America, raise credible questions about whether abortionists today, including those at Planned Parenthood, violate the spirit and the letter of the federal Partial Birth Abortion Ban and similar state laws.[20]

In her discussion with undercover actors, Planned Parenthood's Dr. Nucatola defiantly dismisses the federal *Partial Birth Abortion Ban*—intended to uphold the integrity of the medical profession and draw a bright line against infanticide— as "up to interpretation" for abortionists like herself. "**[T]he Federal Abortion Ban is a law, and laws are up to interpretation**. So there are some people who interpret it as intent. So if I say on Day 1 I do not intend to do this,

[19] The AUL brief is available at http://aul.org/files/amicus-briefs/pdf/GonzalesvPP.pdf

[20] Twenty state prohibitions on partial-birth abortion are in effect. Ten states laws apply throughout pregnancy and have either been upheld in court or mirror the federal partial-birth abortion ban: Arizona, Arkansas, Louisiana, Michigan, Missouri, New Hampshire, North Dakota, Ohio, Utah and Virginia. Seven state laws apply throughout pregnancy and have never been challenged in court: Indiana, Kansas, Mississippi, Oklahoma, South Carolina, South Dakota, and Tennessee. Three state laws apply only after viability: Georgia, Montana, and New Mexico Twelve state laws banning partial-birth abortion are enjoined (most were invalidated by the U.S. Supreme Court's 2000 decision in *Stenberg v. Carhart* and have not been re-enacted under the auspices of the Court's subsequent decision in *Gonzales v. Carhart*): Alabama, Alaska, Florida, Idaho, Illinois, Iowa, Kentucky, Nebraska, New Jersey, Rhode Island, West Virginia, and Wisconsin. For more information and Americans United for Life's model legislation *Partial-Birth Abortion Ban Act see* Defending Life 2015: 10th Anniversary Edition *available at* http://www.aul.org/defending-life-2015/.

what ultimately happens doesn't matter. Because I didn't intend to do this on Day 1, so I'm complying with the law."[21]

Of particular concern is Dr. Nucatola's description about "steps that can be taken to try to ensure" procurement of brain tissue:

> **And with the calvarium [head], in general, some people will actually try to change the presentation so that it's not vertex,** because when it's vertex presentation, you never have enough dilation at the beginning of the case, unless you have real, huge amount of dilation to deliver an intact calvarium. **So if you do it starting from the breech presentation, there's dilation that happens as the case goes on, and often, the last, you can evacuate an intact calvarium at the end.**

The abortion process described by Dr. Nucatola—deliberately changing the baby to breech presentation so that the mother is dilated enough by the time the abortionist is ready to deliver the baby's head, or as she says "evacuate an intact calvarium at the end"—has a troubling similarity to the description of an illegal partial-birth abortion.[22]

The disturbing account offered by Dr. Nucatola, in her words, describes what abortionists "in general" actually do to procure a baby's brain tissue. Not mere speculation or theory, Dr. Nucatola boasted to the undercover actors "[a]nd, we've been pretty successful with that, I'd say."

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[21] Full footage and transcripts for each interview with Planned Parenthood's employees are available at http://www.centerformedicalprogress.org/cmp/investigative-footage/.
[22] *Gonzales v. Carhart*, 550 U.S. 124, 138 (2007).

Planned Parenthood's Senior Medical Director described how she, in fact, treats abortions differently based on whether or not she intends to harvest a baby's body parts. When asked "how much of a difference can that actually make if you know kind of what's expected or what [body parts] we need?" Dr. Nucatola replied: "It makes a huge difference."

At Planned Parenthood, a procurement company's order-list for baby organs "makes a huge difference" but the federal law's clear prohibition on partial-birth abortions is open to "interpretation."

The proposal to permit states to disassociate taxpayer dollars from an organization that runs a business tantamount to infanticide is a minimum solution. Congress can and should protect the integrity of Medicaid by enacting that proposal.

III. PLANNED PARENTHOOD'S UNETHICAL AND POTENTIALLY ILLEGAL ACTIVITY HAS CORPORATE SUPPORT.

The facts also raise probable cause that Planned Parenthood Federation of America has created an enterprise engaged in the coordinated violation of these laws. For example, statements made by Planned Parenthood employees illustrate that Planned Parenthood Federation of America (PPFA) coordinates its affiliates' potentially unethical and illegal practice of harvesting baby

body parts in concert with others and that these practices are already pervasive in California and expanding throughout the United States.[23]

PPFA's enterprise liability is illustrated by the knowledge and complicity of its control persons, especially when they consciously turn a blind eye regarding the activities of its affiliates. For example, Dr. Deborah Nucatola, Senior Medical Director, stated at several places in the video of CMP's lunch meeting with her that the PPFA legal department was well aware of the harvesting and selling of the body parts of aborted unborn infants by many of its affiliates, but advised against issuing written national guidelines, protocols or standards regarding the practice. Willful blindness by an organization or enterprise like Planned Parenthood Federation of America does not exculpate the organization from criminal liability. *See, e.g.*, United States v. Bank of New England, 821 F. 2d 844, 855 (1st Cir. 1987).

Taken together, there is probable cause to investigate whether in their fetal organ harvesting scheme PPFA, its affiliates, and the tissue procurement companies they contract with have violated other federal laws, including conspiracy in violation of 18 U.S.C. § 371, and engaging in racketeering in violation of the "Racketeer Influenced and Corrupt Organizations Act" ("RICO"), 18 U.S.C. § 1961-1968.

[23] Americans United for Life's legal memorandum documenting specific statements made by current and former employees of Planned Parenthood and tissue procurement companies, based on all the full unedited video transcripts released by CMP, which raise probable cause that PPFA violated federal law is available at http://investigatebigabortion.com/legal-response-to-planned-parenthood-profiteering/.

IV. FORMER PLANNED PARENTHOOD EMPLOYEES FROM ACROSS THE COUNTRY HAVE TESTIFIED TO PLANNED PARENTHOOD'S OTHER DANGEROUS AND UNETHICAL PRACTICES.

The most troubling practices uncovered by the Center for Medical Progress adds to evidence that there is systemic and organization-wide abuse at Planned Parenthood.

For example, in 2012, two nurses left Planned Parenthood in Delaware, not because of a change of heart regarding abortion, but—as they testified before the Delaware Senate—because of the abortion clinic's deplorable safety conditions including "meat-market-style, assembly-line abortions."[24]

Sue Thayer, a former Planned Parenthood of the Heartland employee, was fired in 2008 after she began to voice safety concerns surrounding Planned Parenthood's "telemedicine" abortion practice.[25] As she recalls, her supervisors rationalized this practice of dispensing abortion drugs to patients after a video-conference with the abortionist (rather than an in-person exam) by pointing to their lower overhead costs. In her "whistleblower" lawsuit, Ms. Thayer alleges that, lacking the ability to care for these women at their own facilities, Planned Parenthood's telemedicine abortion patients who later experienced significant bleeding were told "to go to an emergency room and report that they were experiencing a spontaneous miscarriage."[26]

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[24] Full text of Jane Mitchell-Werbrich's testimony before the Delaware Senate on May 29, 2013, *available at* http://aul.org/downloads/jayne_mitchell-werbrich_testimony.pdf

[25] *See* http://www.washingtontimes.com/news/2012/jan/31/planned-parenthoods-big-lie/

[26] Second Amended Complaint at 45, United States and Iowa *ex rel* Thayer v. Planned Parenthood of the Heartland, No. CV00129 (S.D. Iowa July 26, 2012). Ms. Thayer is represented by the Alliance Defending Freedom. This case

Former Planned Parenthood officers and employees from across the nation have previously written to the Energy & Commerce Committee that they are "prepared to testify to incidents [they] have witnessed" in which Planned Parenthood affiliates and employees have, among other things, failed to:

- "Notify parents when a vulnerable girl is seeking an abortion, including instances when the minor girl is the victim of an act of statutory rape under applicable state law;"
- "Detect and act upon instances where a girl or woman was brought to the clinic under some degree of coercion, up to and including where the girl was subjected to human trafficking and was a victim of a crime."

In their letter to the Committee, several former Planned Parenthood officers and employers "personally attest" that Planned Parenthood "has operated as a law unto itself, gladly accepting tens of millions of dollars in taxpayer support while using the rubric of 'reproductive rights' to claim an exemption from the normal standards of accountability that every other recipient of public funds is expected to meet."[27]

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has been brought under the federal False Claims Act, 31 U.S.C. §3729 *et seq.*, and the Iowa False Claims Act, Iowa Code Ann. § 685 *et seq.*

[27] For this and the previous two quotations: Letter from Catherine Adair, et al., Former Employees of Planned Parenthood, to Hon. Fred Upton , Chairman, U.S. House of Representatives Energy and Commerce Comm. & Hon. Henry Waxman, Ranking Member, U.S. House of Representatives Energy and Commerce Comm. (Dec. 7, 2011), *available at* http://aul.org/downloads/12.7.11_former_employees_of_planned_parenthood_letter_to_congress_0.pdf

In our ongoing effort to document the truth about Planned Parenthood, AUL has detailed these and other cases of Planned Parenthood abuses in the following publications:

- *The Case for Investigating Planned Parenthood*,
- *The Planned Parenthood Exhibits*,
- *Abortion Inc.—Cecile Richards' Planned Parenthood*, and
- *The New Leviathan: How Planned Parenthood Has Become Abortion, Inc.*

The AUL reports are available at http://www.aul.org/new-leviathan/ and are included as appendices to this testimony.

CONCLUSION

Testifying before the Ways and Means Subcommittee on Oversight in 2011, Office of Inspector General Chief Counsel Lewis Morris addressed efforts to combat health care fraud, calling exclusion from participating in Federal health care programs "one of the most powerful tools in our arsenal." He explained that "Program exclusions bolster our fraud-fighting efforts by removing from the Federal health care programs those who pose the greatest risk to programs and beneficiaries."[28]

However, Morris also described part of the problem in health care funding abuse to be that some providers believe they are "'too big to fire' and thus the Office of the Inspector General would never exclude them and thereby risk compromising the welfare of our beneficiaries."[29] Morris testified that his office is "concerned that providers that engage in health care fraud may consider civil penalties and criminal fines a cost of doing business. As long as the profit from fraud outweighs those costs, abusive corporate behavior is likely to continue."[30]

The sentiment that it is "too big to fire" is the heart of Planned Parenthood's messaging that attempts to hold the American public hostage to its business of infanticide. However, a review of Planned Parenthood Federation of America's annual reports shows that over the last decade the organization has had a dramatically shrinking influence in nearly every sphere except

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[28] *Hearing on efforts to combat health care fraud, Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 112th Cong. 5 (2011) (statement of Lewis Morris, Chief Counsel to the Inspector Gen., U.S. Dep't of Health & Human Servs.), *available at* http://oig.hhs.gov/testimony/docs/2011/morris_testimony_03022011.pdf (last visited Mar. 21, 2011).
[29] *Id.* at 6.
[30] *Id.*

abortion and STI testing. As Americans United for Life has documented, non-controversial services at Planned Parenthood, such as cancer screenings and prenatal services, have sharply declined.[31]

Planned Parenthood cannot be permitted to operate with violations of the laws against serious human rights violations, such as killing infants born alive and partial-birth abortions, as an insubstantial cost of doing business. Having shown that it cannot resist the financial incentives for delivering intact babies, targeting their organs for harvesting, Planned Parenthood cannot be allowed to continue this inhumane business unchecked.

Additionally, Americans should not be forced to fund such unethical and abhorrent practices. Instead they should, through their elected state representatives, be able to reject subsidizing with their tax dollars an organization that has been revealed to be violating commonly held standards of decency and whose actions give probable cause for investigation into multiple felonies.

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[31] *See e.g., Abortion Inc., Cecile Richards' Planned Parenthood*, Americans United for Life, *available at* http://www.aul.org/wp-content/uploads/2015/01/Abortion-Inc.pdf.

Mr. PITTS. The Chair thanks the gentlelady and now recognizes Mr. Casey Mattox, 5 minutes for your opening statement.

STATEMENT OF M. CASEY MATTOX

Mr. MATTOX. Mr. Chairman and members of the committee, thank you for the opportunity to speak to you today.

Planned Parenthood benefits substantially from Medicaid. Despite providing only a limited selection of medical services, it annually receives over a half-billion taxpayer dollars. Over the last decade, Planned Parenthood's own annual reports indicate it has almost doubled its tax revenues, and it has reported $765 million in what it calls excess revenue, $127 million of that last year alone.

During the same time period, Planned Parenthood has reduced its cancer screenings by half and increased the number of abortions it performs even as the national abortion rate has declined, giving it a 40 percent market share, as Planned Parenthood's senior medical director, Deborah Nucatola, bragged in the first CMP video.

Planned Parenthood receives taxpayer dollars in many ways, but principally from Medicaid. Yet Planned Parenthood is unlike many other providers, not only because of its profits, but also because it has also been able to resist much of the corrective action that other Medicaid providers with its track record would expect. And unlike other Medicaid providers, Planned Parenthood has spent millions of dollars in recent elections supporting its preferred candidates. Planned Parenthood has a long history of actions that would have jeopardized its State Medicaid contracts were it any other provider.

The States regulate medicine, and the States supply their own tax dollars to Medicaid. Thus Congress did not create one Medicaid program. It created 50. States are free to craft their own programs to best serve their own citizens' needs, choosing which providers they will entrust with taxpayer dollars. The Medicaid Act itself and its legislative history affirm that States have broader authority than even the Federal Government to exclude providers from their Medicaid programs, and the courts have agreed.

Thus, over the last two decades, over 9,000 of the now 554,000 Medicaid providers in this country have been disqualified from State Medicaid programs. Those decisions are usually uncontroversial, but recent actions by the Federal Government to protect Planned Parenthood have undermined that Federal-State balance. When States choose not to contract with abortionists and their Medicaid programs, reasonably concerned that taxpayer dollars would subsidize those abortions, the administration issued a new interpretation of the Medicaid statute that purports to deny them the right to administer their State Medicaid program.

Recently, after several States terminated contracts with Planned Parenthood specifically, the administration expanded that interpretation, claiming that those States lacked the right to exclude individual providers suspected of violating the law, at least where Planned Parenthood is concerned. This despite the fact that each State has hundreds of other low-cost healthcare options for the few Planned Parenthood clinics' limited service.

The administration's actions are robbing the States of control over their own State Medicaid programs to protect a politically powerful but ethically and legally challenged organization. Con-

gress can restore the proper balance, allowing States to determine which providers they trust with taxpayer dollars.

Any other Medicaid provider subject to multiple whistleblower lawsuits by former employees alleging tens of millions of dollars in waste, abuse, and potential fraud, which paid $4.3 million after being accused of submitting false claims by the Obama administration Department of Justice, which has been specifically identified as the source of over $8 million in Medicaid overpayments by Government audits, including submitting claims for abortion-related services, any other provider like that would not be surprised to have its Medicaid billing privileges suspended or even terminated.

Any other Medicaid provider caught having failed to report sexual abuse of minors at least a dozen times, including most recently a 14-year-old girl in Mobile, Alabama, who was returned twice, after two abortions in Mobile, returned twice to her abuser without reporting that information to authorities, any other Medicaid provider in that position would be surprised to only have their Medicaid privileges terminated.

Any other Medicaid provider that was paid by a for-profit company, StemExpress, for baby body parts where that company has claimed in writing to provide "financial profits," quote, and "fiscal rewards" to abortion clinics in marketing materials bearing the endorsement of that Medicaid provider whose CEO acknowledged to Congress—we are not talking about the videos—acknowledged to Congress that it had received $60 per baby body part and could provide no evidence that actually connected those payments with any actual expenses that Planned Parenthood experienced, whose top-level management has been captured on hours of videos negotiating prices for those organs and the alteration of abortion methods against the mother's knowledge to obtain those organs for sale would rightfully expect that its Medicaid contract would be in jeopardy.

But Planned Parenthood is not any other Medicaid provider. It is a politically powerful organization that spends substantial sums from its sizeable excess revenues to maintain its funding and its political power, and Planned Parenthood is being protected by this administration.

Congress can reaffirm that the States have the authority to govern their own State Medicaid programs and make decisions that are in the interest of their citizens, even where Planned Parenthood is concerned.

[The prepared statement of Mr. Mattox follows:][1]

[1] Additional information submitted by Mr. Mattox has been retained in committee files and also is available at *http://docs.house.gov/meetings/IF/IF14/20150917/103957/HHRG-114-IF14-Wstate-MattoxC-20150917-SD001.pdf.*

TESTIMONY

**BEFORE THE HEALTH SUBCOMMITTEE
OF THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE**

ON

**"PROTECTING INFANTS: ENDING TAXPAYER FUNDING FOR
ABORTION PROVIDERS WHO VIOLATE THE LAW"**

BY

**M. CASEY MATTOX
SENIOR COUNSEL, ALLIANCE DEFENDING FREEDOM**

SEPTEMBER 17, 2015

Despite providing only a limited selection of medical services,[1] Planned Parenthood annually receives over a half billion in taxpayer dollars.[2] Last year alone, the non-profit also reported $127 million "excess revenue."[3] Over the last ten years, while its Medicaid funding has increased and it has accumulated approximately $750 million in "excess revenue,"[4] Planned Parenthood has reduced its cancer screenings by half[5] and increased its abortions, even as the national abortion rate has declined. Planned Parenthood receives taxpayer dollars from multiple revenue streams (*e.g.*, federal funds flow through state and regional health agencies to Planned Parenthood affiliates, primarily through several provisions of the Social Security Act: Temporary Assistance to Needy Families (TANF) (Title IV); Maternal and Child Health Services Grants (Title V); the Federal Family Planning Program (Title X); Medicaid Family Planning (Title XIX) and the Social Security Block Grant Program (Title XX)),[6] but the great majority of Planned Parenthood's taxpayer funding comes from Medicaid.

Yet, Planned Parenthood is unlike many other Medicaid providers. Not only has it had great financial success as a Medicaid provider, but also it has been able to avoid much of the oversight and/or corrective action that most Medicaid providers would expect and have received.

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[1] *See* http://www.plannedparenthood.org/ for a list of the limited services that Planned Parenthood provides (last visited Sept. 15, 2015).
[2] *See, e.g.*, http://issuu.com/actionfund/docs/annual_report_final_proof_12.16.14_/0 (last visited Sept. 15, 2015).
[3] *Id.*
[4] *See* Planned Parenthood Federation of America Annual reports 2004 – 2014.
[5] Compare Planned Parenthood Federation of America's 2004-2005 Annual Report to Planned Parenthood Federation of America's 2013-2014 Annual Report.
[6] *See* Alan Guttmacher Institute, *Public Funding for Contraceptive, Sterilization and Abortion Services,* https://www.guttmacher.org/pubs/Public-Funding-FP-2010.pdf (last visited Sept. 15, 2015).

Moreover, between local affiliates and the national organization, Planned Parenthood has spent many millions of dollars to support the election of its preferred candidates.[7]

In the wake of the videos released by the Center for Medical Progress ("CMP"), many states are now re-examining Planned Parenthood affiliates and their participation in their state Medicaid programs. The videos appear to show evidence of violations of federal and state laws as well as serious ethical concerns. This only adds to the mounting evidence of waste, abuse and potential fraud, the failure to report suspected statutory rape and sex trafficking, and other violations of state and federal laws.

States considering termination of Medicaid Provider Agreements with Planned Parenthood are well within their rights. Actions being considered by Congress may further clarify that it is the states who are empowered to conduct their own Medicaid programs and that the federal government or the courts may not compel them to qualify providers that violate federal or state law, act unethically, or which the state concludes are otherwise not suitable for participation in its Medicaid program.

To understand the rights and obligations states have when they choose to terminate Planned Parenthood's participation in their state Medicaid programs, it is necessary to briefly review the structure of the Medicaid program and states' responsibilities for developing and administering their own programs, including determination of the provider qualifications. I will also address the obstacles states have faced and are facing from the current Administration in choosing to disqualify Planned Parenthood from their state Medicaid programs, as well as the grounds states have to terminate Planned Parenthood from Medicaid.

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[7] Planned Parenthood gave $18 million to political action committees in 2014 and 2012, according to the Center for Responsive Politics. Most of its nearly $6 million in direct contributions since 1990 have gone to pro-abortion candidates. *See, e.g.*, https://www.opensecrets.org/orgs/summary.php?id=D000000591&cycle=2014 (last visited Sept. 15, 2015); https://www.opensecrets.org/orgs/summary.php?id=D000000591&cycle=2012 (last visited Sept. 15, 2015); https://www.opensecrets.org/orgs/totals.php?id=D000000591&cycle=2014 (last visited Sept. 15, 2015).

I. The Role of States in Medicaid

Medicaid is a federal-state cooperative program that subsidizes states' provision of medical services to "families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. § 1396-1. The federal government shares the costs of Medicaid with states that elect to participate in the program. In return, participating states agree to comply with requirements imposed by the Medicaid Act.[8]

The states operate their own state Medicaid programs within federal guidelines. On the federal level, Congress has delegated the authority to regulate these state-administered programs to the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services ("CMS"). Each state develops its own Medicaid plan to serve the needs of its citizens. CMS then evaluates and approves these state plans, *i.e.*, a "state approved plan" or "SAP," by which a state agency administers the program.[9]

The Medicaid program guarantees states "flexibility in designing plans that meet their individual needs" and "considerable latitude in formulating the terms of their own medical assistance plans." *Addis v. Whitburn*, 153 F.3d 836, 840 (7th Cir. 1998) (citing *Dandridge v. Williams*, 397 U.S. 471, 487 (1970)). States enjoy "considerable autonomy" under Medicaid to "select dramatically different levels of funding and coverage, alter and experiment with different financing and delivery modes, and opt to cover (or not to cover) a range of particular procedures and therapies. States have leveraged this policy discretion to generate a myriad of dramatically different Medicaid programs over the past several decades." *National Federation of Independent Businesses v. Sebelius,* 132 S.Ct. 2566, 2632 (2012) (Ginsburg, J., concurring in part and

[8] The Medicaid Act is found in Title XIX of the Social Security Act, 42 U.S.C. §§1396–1396v. Regulations relating to the Medicaid Act are contained in Chapter IV, Title 42 and subtitle A, Title 45 Code of Federal Regulations.
[9] *See* 42 C.F.R. § 431.10.

dissenting in part), quoting Ruger, *Of Icebergs and Glaciers*, 75 LAW & CONTEMP. PROBS. 215, 233 (2012). This flexibility and wide latitude reflects the fact that when a state acts within its core or natural sphere of operation, such as regulating medical care,[10] or expends its own funds as a state does in providing its cooperative share for Medicaid, attention to the principles of federalism is all the more critical.

In keeping with this wide latitude for state authority, Medicaid regulations permit states to establish "reasonable standards relating to the qualifications of providers." 42 C.F.R. § 431.51(c)(2).

II. Disqualification or Exclusion of Medicaid Providers.

Termination of a provider from the program, or "exclusion" as CMS refers to it (*see* 42 U.S.C. § 1396a(p)(3) ("As used in this subsection, the term 'exclude' includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.")), occurs when a state Medicaid program revokes a Medicaid provider's billing privileges, and the provider has exhausted all applicable appeal rights or the timeline for appeal has expired. Consistent with the states' role in determining the qualification of providers in their state Medicaid programs – and regulating the practice of medicine within the state generally, CMS ordinarily defers to state law regarding terminations. In the relatively rare cases in which a provider's termination from the state Medicaid program has been challenged, courts have also typically deferred to state decisions to terminate Medicaid providers from their state Medicaid programs.

While Medicaid vests the responsibility of determining provider qualification with the states, it also authorizes the federal government to exclude providers in some cases. Federal law

[10] *Pa. Med. Soc'y v. Marconis*, 942 F.2d 842, 847 (3d Cir. 1991) ("The licensing and regulation of physicians is a state function . . . . Thus, the state regulation is presumed valid. To rebut this presumption, appellants must show that Congress intended to displace the state's police power function.").

enumerates circumstances under which the federal Secretary of HHS *must* terminate a Medicaid provider. These include conviction for program-related crimes (42 U.S.C. § 1320a-7(a)(1)); conviction related to patient abuse or neglect (42 U.S.C. § 1320a-7(a)(2)); felony conviction for health care fraud (42 U.S.C. § 1320a-7(a)(3)); and felony conviction relating to controlled substances (42 U.S.C. § 1320a-7(a)(4)).[11]

The Medicaid statute also provides grounds for which the U.S. Department of Health and Human Services, in its discretion, may exclude a provider.[12] These include claims for excessive charges, unnecessary services, or services which fail to meet professionally recognized standards of health care (42 U.S.C. § 1320a-7(b)(6)); fraud, kickbacks, and other prohibited activities (42 U.S.C. § 1320a-7(b)(7)); entities controlled by a sanctioned individual (42 U.S.C. § 1320a-7(b)(8)); failure to disclose required information, supply requested information, or supply payment information (42 U.S.C. § 1320a-7(b)(9)-(11)); sanctioned individuals controlling an entity (42 U.S.C. § 1320a-7(b)(15)); and making false statements or misrepresentations of material fact (42 U.S.C. § 1320a-7(b)(16)). The Secretary may also exclude when a provider has not complied with its obligation to ensure that services or items "will be provided economically and only when, and to the extent, medically necessary;" "will be of a quality which meets professionally recognized standards of health care;" and "will be supported by evidence of medical necessity and quality...." 42 U.S.C. § 1320c-5.

The powers of a state Medicaid program to exclude a provider are broader than those of the federal government. A state Medicaid program may also exclude a health care provider from participation "for any reason for which the Secretary could exclude the [provider] from

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[11] *See* generally, HHS OIG, Exclusion Authorities, *available at* http://oig.hhs.gov/exclusions/authorities.asp (last visited Sept. 15, 2015).

[12] These include 42 U.S.C. §§ 1320a-7(b)(1)(A) and (B); 1320a-7(b)(2)-(8); 1320a-7(b)(8)(A); 1320a-7(b)(9)-(16); and 1320c-5. *See* HHS OIG, *Exclusion Authorities*, *supra* n13.

participation" (*i.e.*, the grounds for discretionary exclusion enumerated above) "*[i]n addition* to any other authority." 42 U.S.C. § 1396a(p)(1) (emphasis added). The phrase "[i]n addition to any other authority" "permit[s] a state to exclude an entity from its Medicaid program *for any reason established by state law*." *First Med. Health Plan v. Vega-Ramos*, 479 F.3d 46, 53 (1st Cir. 2007) (emphasis added).

The First Circuit observed that the legislative history of the Medicaid Act rejected a narrower view of the state's power to disqualify providers.

> The [Medicaid exclusion] statute expressly grants states the authority to exclude entities from their Medicaid programs for reasons that the Secretary could use to exclude entities from participating in Medicare. But it also preserves the state's ability to exclude entities from participating in Medicaid under 'any other authority.' The legislative history clarifies that this 'any other authority' language was intended to permit a state to exclude an entity from its Medicaid program for *any* reason established by state law. The Senate Report states:
>
> The Committee bill clarifies current Medicaid Law by expressly granting states the authority to exclude individuals or entities from participation in their Medicaid programs for any reason that constitutes a basis for an exclusion from Medicare. . . . *This provision is not intended to preclude a state from establishing, under state law, any other bases for excluding individuals or entities from its Medicaid program.*

Id. (emphasis by the court) (*quoting* S. Rep. 100-109, reprinted in 1987 U.S.C.C.A.N. at 700). Thus, consistent with principles of federalism and the sovereign right of states to regulate the medical profession within their borders and to expend their own taxpayers' funds, states have congruent authority with the federal government to terminate providers for reasons that would satisfy the Secretary, as well as their own authority to exclude providers for violations of state law.

State statutes implementing this authority provide for exclusion based on license revocation by the state licensing agency; refusal to grant access to Medicaid-related records to the state Department or Auditor; provision of goods or services that are unnecessary or of

inferior quality; false claims or statements; or being found liable for neglect of patients resulting in death or injury.[13] Numerous courts have upheld the exercise of this broad authority for many reasons that advance state law and policy, including suspected fraud (*Guzman v. Shewry*, 552 F.3d 941, 950 (9th Cir. 2009); conflicts of interest (*Vega-Ramos*, 479 F.3d at 49-50); engaging in industrial pollution (*Plaza Health Laboratories, Inc. v. Perales*, 878 F.2d 577, 578-79 (2d Cir. 1989)); and inadequate record-keeping (*Triant v. Perales*, 491 N.Y.S.2d 486, 488 (N.Y. App. Div. 1985)). Medicaid providers are also subject to other state laws regulating medical providers, including health and safety standards, informed consent requirements, mandatory reporting for sexual abuse of minors, and other similar laws. Violations of these state laws may also result in termination of a provider's Medicaid agreement.

III. Administration Action to Diminish State Authority Over Their Medicaid Programs

In 2011, Indiana, concerned that state taxpayer dollars indirectly support abortion when abortionists participate in the state Medicaid program, determined that abortionists would not be qualified as providers under Indiana's Medicaid program.[14] With Planned Parenthood immediately launching litigation against the state, CMS issued a new interpretation of 42 U.S.C. §1396a(a)(23) that purports to limit states' authority to set qualifications of providers on the ground that doing so would deny an individual a "free choice of [] provider." CMS has recently sent letters to some states after they chose to disqualify Planned Parenthood as a provider pursuant to the terms of their Medicaid Provider Agreement. CMS asserts that the actions violate its interpretation of the "free choice of [] provider" provision.

Section 1396a(a)(23) of the Medicaid Act provides that Medicaid patients may obtain medical services "from any institution, agency, community pharmacy, or person, qualified to

[13] Alice G. Gosfield, MEDICARE AND MEDICAID FRAUD AND ABUSE § 4:15 (2015).
[14] Arizona later took a very similar action for the same reasons.

perform the service or services required . . . who undertakes to provide him such services." This "free choice of qualified provider" provision – inaccurately, but frequently, referred to as the "free choice of [] provider," provision by the current CMS and Planned Parenthood – gives Medicaid patients "the right to choose among a range of qualified providers, without government interference." *O'Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 785 (1980).

In the wake of this CMS interpretation, the Seventh and Ninth Circuits have held on the basis of the Medicaid "free choice of qualified provider" provision that states may not exclude an entire *class* of otherwise qualified family planning service providers from participation in a Medicaid program on the basis that the class of providers performed induced abortions.[15] These circuits held that state Medicaid programs may not disqualify a "class" of providers based on their "scope of service," namely their participation in providing elective abortion. But both before and even after these decisions, Courts have made clear that when a State disqualifies an individual provider under either federal or state law, or because of concerns about ethics, safety, or professional competency, the termination should be upheld. *Planned Parenthood of Ind. v. Comm'r*, 699 F.3d 962, 968 (7th Cir. 2012), *cert. den.*, 133 S.Ct. 2738 (2013) ("Indiana has **broad authority to exclude unqualified providers** from its Medicaid program," including whether the state believes they cannot provide services in a "professionally **competent, safe, legal**, and **ethical** manner.").

Exclusion of Medicaid providers for a variety of reasons is relatively common and rarely challenged. According to the HHS Office of the Inspector General, over 9,000 providers have been excluded as Medicaid providers over the last two decades.[16] Exclusion of a Medicaid

[15] *Planned Parenthood of Az., Inc. v. Betlach*, 727 F.3d 960 (9th Cir. 2013), cert. den., 134 S.Ct. 1283 (2014); *Planned Parenthood of Indiana, Inc. v. Commr., Indiana State Dept. of Health*, 699 F.3d 962 (7th Cir. 2012), cert. den., 133 S.Ct. 2738 (2013).
[16] *See* http://oig.hhs.gov/exclusions/index.asp (last visited Sept. 15, 2015).

provider is thus nothing new. It is a common experience for states to suspend or terminate a Medicaid provider's participation in the program. Medicaid providers cannot usually rely upon the support of the federal government – including reinterpretation of the Medicaid Act – when a state disqualifies them from its state Medicaid program. Planned Parenthood is a unique case.

Where a state has cause, under state or federal law or for ethical reasons, to exclude an individual provider, there should be little doubt that the state may terminate its Medicaid agreement with such a provider. Neither the *Betlach* nor *Planned Parenthood of Ind.* decisions suggest otherwise.

Finally, it should be noted that the disqualification of Planned Parenthood from any state Medicaid program would not deny anyone a meaningful choice of providers. Planned Parenthood represents a very small part of the Medicaid-eligible providers in every state. And in some states like Louisiana, Arkansas and Alabama, which have already terminated their Medicaid Provider Agreements with Planned Parenthood, Planned Parenthood has only two locations in each state. By comparison, there are 294 Federally Qualified Health Center and Rural Health Clinic delivery sites in Louisiana, 234 in Alabama, and 179 in Arkansas. Nationally, there are over 13,000 FQHC sites and RHC sites providing primary care and more comprehensive care overall than Planned Parenthood offers.[17] These maps do not even include the thousands of private physicians who also accept Medicaid. Fewer than 2% of all women actually use Planned Parenthood for any service in any given year.[18] And even those women must also seek care elsewhere for any services beyond those limited services Planned Parenthood

[17] *See* https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/mlnProducts/Downloads/rhclistbyprovidername.pdf (last visited Sept. 15, 2015) and http://datawarehouse.hrsa.gov/Data/datadownload/hccDownload.aspx (last visited Sept. 15, 2015). Federally Qualified Health Clinics ("FQHC") and "Look Alikes" provide primary and preventive medical care and enabling services. Rural Health Clinics also offer primary and preventive medical services.

[18] *See* http://www.politifact.com/truth-o-meter/statements/2015/jul/31/harry-reid/harry-reid-says-30-women-rely-only-planned-parenth/ (last visited Sept. 15, 2015).

offers. Termination of Planned Parenthood from any state's Medicaid program would not meaningfully limit the choice of a wide range of Medicaid providers.

IV. Potential Bases of Termination for Cause.

States considering termination of Planned Parenthood's Medicaid agreement may have several bases to do so – stemming from the videos and also from other violations of state and federal laws. As discussed above, states have "broad authority to exclude unqualified providers from [their] Medicaid program[s]," where the state lacks confidence that the provider is "capable of performing the needed medical services in a professionally competent, safe, **legal**, and **ethical** manner." *Planned Parenthood of Ind.*, 699 F.3d at 978 (emphasis added). A few of those examples are discussed below. Other Medicaid providers in Planned Parenthood's position, but lacking the active support of the Administration, would not be surprised to find that a state had terminated their Medicaid Provider Agreement.

1. Pending Investigation.

States may terminate a medical provider during a pending investigation. *Guzman*, 552 F.3d at 949. *Guzman* demonstrates the broad authority which states have to set reasonable standards for participation in Medicaid, and the latitude that states enjoy to exclude providers under state law. In 2006, the California Department of Health Care Services opened an investigation into certain potentially fraudulent claims. Guzman, an obstetrician/gynecologist, had submitted for payment claims for large quantities of intrauterine devices ("IUDs") from Mexico which were not approved by the FDA for use in the United States. Guzman argued that federal law prohibited States from suspending providers from a state health care program simply because the provider is "under investigation" for fraud or abuse. The Ninth Circuit, however, disagreed, noting that "[t]he Medicaid statutes contain 'no explicit preemptive language' limiting

the grounds upon which a state may suspend a provider from a state health care program" and that "nothing in the federal Medicaid statutes or regulations prevents a state from suspending a provider temporarily from a state health care program on the basis of an ongoing investigation for fraud or abuse." 552 F.3d at 949-50. The Court concluded that because Medicaid refers to "other authority" to exclude retained by the States, "[t]his provision plainly contemplates that states have the authority to suspend or to exclude providers from state health care programs for reasons other than those upon which the Secretary of HHS has authority to act." *Id.* "[N]ot only does the applicable federal statute fail to prohibit states from suspending providers from state health care programs for reasons other than those upon which the Secretary of HHS may act, the governing regulation specifically instructs that states have such authority." *Id.* at 950.

Planned Parenthood affiliates and clinics are, of course, the subject of ongoing investigations in numerous states and by several congressional committees. States may suspend Medicaid payments to Planned Parenthood affiliates during these investigations into violations of state and federal law.

2. Fiscal Fraud, Waste and Abuse.

Alliance Defending Freedom issues an annual report to Congress compiling and detailing the known public government audits of Planned Parenthood waste, abuse, and potential fraud involving taxpayer funds.[19] The report details several dozen known public audits of Planned Parenthood affiliates that have uncovered waste, abuse, and potential financial fraud, and suggests that Planned Parenthood and its affiliates are engaged in a pattern of practices designed

[19] *Profit. No Matter What. Alliance Defending Freedom's Annual Report on Publicly Available Audits of Planned Parenthood Affiliates and State Family Planning Programs*, July 23, 2014, *available at* http://www.adflegal.org/detailspages/press-release-details/adf-congressional-report-exposes-planned-parenthood-s-ongoing-taxpayer-abuse (last visited Sept. 15, 2015).

to maximize their revenues through billings to these complex programs that rely on the integrity of the provider for program compliance.

Forty-four known but scope-limited public audits of Planned Parenthood affiliates in just nine states have revealed over $8 million in overpayments to Planned Parenthood from the Medicaid program. Additionally, another fifty-one limited federal audits of state family planning programs have also identified another $107 million in overbilling. These also demonstrated that in many cases federal taxpayer dollars are paying for abortions despite claims to the contrary. The federal audits detailed "unbundling" billing schemes related to pre-abortion examinations, counseling visits, and other services performed in conjunction with an abortion; and improper billing for the abortions themselves.[20]

In New York, alone, during one four-year audit period, it appeared that hundreds of thousands of abortion-related claims were billed unlawfully to Medicaid. While these federal HHS-OIG audits do not usually identify specific providers, two of these federal audits specifically identified Planned Parenthood as overbilling the state family planning program. Moreover, seven of the federal HHS-OIG audits were of New York State and found federal overpayments in excess of $32 million to the New York State Medicaid family planning program. These audits likely led to the seven state audits of New York Planned Parenthood affiliates. Thirteen months after the federal audit of NewYork State that identified "especially Planned Parenthoods" as incorrectly claiming services as family planning, New York State released its first known audit report of a Planned Parenthood affiliate.[21]

Moreover, in *United States ex. rel. Reynolds v. Planned Parenthood Gulf Coast*, No. 9:09-cv-124 (E.D. Tex.), the Planned Parenthood affiliate paid $4.3 million to settle a False

[20] *Id.*, Supra n. 19.
[21] *Id.*

Claims Act lawsuit by a former employee alleging Medicaid fraud. The Justice Department intervened in the lawsuit to prosecute the violations. The settlement agreement states:

> "The United States contends that PPGC submitted false claims and made false statements to the United States in connection with claims PPGC submitted to the United States" under Medicaid and other programs.[22]

Other Planned Parenthood clinic directors have also filed lawsuits under the False Claims Act alleging many millions more in Medicaid fraud.[23] For example, Sue Thayer is a former Planned Parenthood clinic director who worked for seventeen years in Iowa Planned Parenthood clinics. She alleged over $20 million dollars in Medicaid fraud by Planned Parenthood of the Heartland. The United States Court of Appeals for the Eighth Circuit held last year that her claims could proceed, holding:

> [W]e conclude that Thayer has pled sufficiently particularized facts to support her allegations that Planned Parenthood violated the FCA by filing claims for (1) unnecessary quantities of birth control pills, (2) birth control pills dispensed without examinations or without or prior to a physician's order, (3) abortion-related services, and (4) the full amount of services that had already been paid, in whole or in part, by 'donations' Planned Parenthood coerced from patients.

U.S. ex. rel. Thayer v. Planned Parenthood of the Heartland, 765 F.3d 914 (8th Cir. 2014).

Confirming that these are not isolated incidents, seven former Planned Parenthood employees informed the House Energy and Commerce Subcommittee on Oversight and Investigations in another investigation that "PPFA failed to properly account for and maintain separation between government funds prohibited from use for elective abortions and [other,

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[22] *See* Settlement Agreement in *United States ex. rel. Reynolds v. Planned Parenthood Gulf Coast*, available at http://www.scribd.com/doc/157465464/Planned-Parenthood-Gulf-Coast-4-3-Million-Settlement-Agreement-with-Government (last visited Sept. 15, 2015).

[23] *See, e.g., United States ex. rel. Susan Thayer v. Planned Parenthood of the Heartland*, 765 F.3d 914 (8th Cir. 2014); *see also http://www.adfmedia.org/News/PRDetail/5395* (last visited Sept. 15, 2015).

unrestricted] funds…."[24] Further, "PPFA failed to engage in appropriate financial controls and billing practices to ensure compliance with applicable state and federal laws."[25]

State Medicaid determinations that a provider committed Medicaid fraud or submitted wasteful claims are a valid basis for disqualifying any provider, including Planned Parenthood, from participation in state Medicaid programs.

3. Failure to Make Mandatory Reports of Minor Sexual Abuse.

All fifty states and U.S. territories and the District of Columbia require reporting of suspected neglect or abuse of children, including sexual abuse.[26] These reporting laws typically include statutory rape.[27] Medical professionals are almost always specifically included in statutory lists of mandatory reporters of suspected abuse or neglect of children.[28]

Despite these state laws, Planned Parenthood affiliates across the country have repeatedly demonstrated a willful refusal to protect children from sexual predators. Alliance Defending Freedom's report, "How Planned Parenthood 'Cares' for Child Victims of Sexual Abuse: A Summary of Planned Parenthood Failing to Report Sexual Abuse,"[29] documents numerous reports of civil and criminal actions in seven states that involve Planned Parenthood apparently covering up or enabling statutory rape. Most recently, a Planned Parenthood location in Mobile, Alabama failed to report the suspected sexual abuse of a 14 year-old, who came to Planned

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[24] Letter from Catherine Adair et al., Former Employees of Planned Parenthood Affiliates, to Fred Upton, Chairman, U.S. House of Representatives Energy and Commerce Committee, & Henry Waxman, Ranking Member, U.S. House of Representatives Energy and Commerce Committee (Dec. 7, 2011), *available at* http://www.sba-list.org/suzy-b-blog/former-planned-parenthood-employees-speak-out (last visited Sept. 15, 2015).

[25] *Id.*

[26] *See* http://www.ncsl.org/research/human-services/redirect-mandatory-rprtg-of-child-abuse-and-neglect-2013.aspx (last visited Sept. 15, 2015).

[27] The Lewin Group, *Statutory Rape: A Guide to State Laws and Reporting Requirements*, prepared for the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Dec. 15, 2004, p.14.

[28] According to the National Conference of State Legislatures, the laws in 48 states, in addition to U.S. territories, list groups of individuals who are required to report include health-care providers; New Jersey and Wyoming do not provide a specific list of professionals required to report. *See* http://www.ncsl.org/research/human-services/child-abuse-and-neglect-reporting-statutes.aspx (last visited Sept. 15, 2015).

[29] *See* http://www.adfmedia.org/News/PRDetail/9746.

Parenthood for two abortions in a 5 month period last year.[30] In Ohio, another 14 year-old girl was impregnated by her adult soccer coach, and Planned Parenthood performed an abortion without the notification or consent of either of her parents. The coach was later found guilty of 7 counts of sexual battery.[31]

Live Action, through its undercover investigations, has repeatedly caught Planned Parenthood employees deliberately ignoring age disparities between young girls and the men who prey on them, advising the girls not to disclose to them the age of the men, or instructing minors how to circumvent parental notification laws.[32] Several years ago, Life Dynamics also conducted undercover calls to Planned Parenthood affiliates with similar shocking results.[33]

Sex trafficking also appears to be a nationwide problem that Planned Parenthood has washed its hands of. Statistics from the Department of Justice indicate that over 100,000 children in the U.S. fall victim to sex-trafficking each year, and 300,000 to 400,000 American children are involved in some form of sex-trafficking annually.[34] Live Action videos documented seven Planned Parenthood clinics in four different states willing to aid and abet the sex-trafficking of minor girls by supplying confidential birth control, STD testing, and secret abortions to underage girls and their traffickers.[35]

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[30] *Id.*
[31] *Id.*
[32] *See* http://www.lifesitenews.com/news/vindicated-live-action-busted-indy-planned-parenthood-for-covering-up-statu. Several videos of these undercover operations can be viewed at http://www.liveaction.org/monalisa/ (last visited Sept. 15, 2015).
[33] Life Dynamics maintains copies of the recorded calls and transcripts from its investigation on its website, as well as an excellent report on this subject, including examples from Planned Parenthood and other abortion businesses. *See* http://www.childpredators.com/the-child-predator-report/ (last visited Sept. 15, 2015).
[34] *See* http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited Sept. 15, 2015).
[35] Live Action, "Trafficking Project," *available at* http://liveaction.org/download-live-action-videos/ (last visited Sept. 15, 2015).

4. Violations of Federal Laws Relating to Fetal Tissue Procurement.

As previously noted, a state's finding that a Planned Parenthood affiliate has failed to act in an ethical manner may also support a state's exclusion of that provider. Numerous recent reports of Planned Parenthood affiliates engaged in the practice of post-abortion fetal organ harvesting, the involvement of national Planned Parenthood officials in this practice, and misleading government officials regarding this conduct may provide the basis for exclusion.

42 U.S.C. §289g-2 states "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration. The law narrowly exempts certain "reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue." Further, although 42 U.S.C. §289g-1 allows the federal government to "conduct or support research on the transplantation of human fetal tissue for therapeutic purposes," this statute specifically requires informed consent by the woman for whom the abortion is being performed, as well as all of the researchers who receive the fetal tissue. And it strictly prohibits any "alteration of the timing, method, or procedures used to terminate the pregnancy . . . solely for the purposes of obtaining the tissue."[36]

While Planned Parenthood claims that it only receives reimbursement for expenses, there is substantial evidence – from the videos and otherwise – that Planned Parenthood was receiving payments that more than compensated any actual expenses. First, Stem Express, the for-profit organ harvesting company with which Planned Parenthood affiliates in California were working, publicly claimed that it was providing "fiscal rewards" and "financial profits" to abortion clinics

[36] *See* Hans von Spakovsky, "The Justice Department Needs to Investigate Planned Parenthood, National Review Online, Jul. 31, 2015, *available at* http://www.nationalreview.com/article/421870/ planned-parenthood-videos-criminal-investigation-loretta-lynch (last visited Sept. 15, 2015).

in its marketing materials endorsed by Planned Parenthood executives.[37] This is a company that had an ongoing contractual relationship with Planned Parenthood in its own words, in a flyer bearing the endorsement of Planned Parenthood.

Moreover, there appears to be no dispute that Planned Parenthood was not transporting organs or storing them for Stem Express. Rather, Stem Express employees came to Planned Parenthood locations, harvested the organs they wanted, and left with them themselves. While Planned Parenthood officials and defenders have continued to repeat that the payments they received only covered costs for "transportation," "packaging," and other expenses they have not explained how they would have any expenses for these items given Stem Express's on site procurement methods. Cecile Richards has conceded that Planned Parenthood was receiving $60 payments for each harvested organ,[38] but has made no attempt to actually connect this payment to any permissible reimbursable expenses. The CMP videos only confirm these facts. In multiple videos Planned Parenthood officials are negotiating prices for organs. At best they acknowledge a need to find a price they can defend, but not one that actually reimburses them for actual statutorily specified expenses.

Cecile Richards also acknowledged to Congress that its abortionists will "adjust" abortion procedures in order to obtain specimens. Federal law prohibits alteration of the timing or methods of abortion procedures for this purpose. 42 U.S.C. §289g-1. This law protects women from being coerced into more dangerous abortion procedures for the financial benefit of a for-profit harvesting company like Stem Express and even an ostensible non-profit like Planned Parenthood. The CMP videos further confirm the fact that Planned Parenthood is altering abortion procedures through "less crunchy" methods to obtain better and more salesworthy

[37] *See* http://goo.gl/DRBbf2 (last visited Sept. 15, 2015).
[38] *See* Cecile Richards' Letter to Congress, dated August 27, 2015.

specimens.[39]Indeed, in one video the method described by Deborah Nucatola, PPFA's Senior Director of Medical Services, seems to imply the use of Partial Birth Abortion to obtain better and more useful samples.40 Yet, as CMP has also revealed, in apparent recognition of its obligations under federal law, Planned Parenthood's own consent forms expressly tell the woman that "there will be **no changes** to how or when my abortion is done in order to get my blood or the tissue."41 (emphasis supplied). However, Planned Parenthood's own president, Cecile Richards, admits in her letter to Congress that Planned Parenthood physicians alter abortion procedures in order to "facilitate fetal tissue donation."[42] Not only does the available evidence suggest that Planned Parenthood may be receiving illegal compensation for the organs it is selling and illegally and unethically changing abortion methods to obtain those samples, it appears it has also mislead women into consenting for the use of the remains of their unborn child's body parts using false information.

State Medicaid programs are empowered to disqualify providers who violate federal and state laws and ethical norms.

5. Violations of the Partial Birth Abortion Ban Act and the Born Alive Infant Protection Act.

Federal law prohibits partial-birth abortions except where necessary to save the mother's life. 18 U.S.C. § 1531.[43] Comments from Deborah Nucatola, Senior Medical Director of Planned

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[39] *See* http://www.centerformedicalprogress.org/wp-content/uploads/2015/05/PPFA020615_transcript.pdf (last visited Sept. 15, 2015).

[40] *See* http://www.centerformedicalprogress.org/wp-content/uploads/2015/05/PPFAtranscript072514_final.pdf (last visited Sept. 15, 2015).

[41] Planned Parenthood Consent Form for Fetal Tissue, http://www.centerformedicalprogress.org/wp-content/uploads/2015/05/PP-Mar-Monte-tissue-consent.pdf (last visited Sept. 15, 2015).

[42] *See* page 7 of Cecile Richard's Letter to Congress, dated August 27, 2015.

[43] The Partial-Birth Abortion Ban Act contains no health exception. When the Supreme Court considered the constitutionality of the Partial-Birth Abortion Ban Act in 2006, Planned Parenthood and other abortionists argued that approximately 2200 partial-birth abortions per year were *necessary* for health reasons. When the Supreme Court issued its opinion in April 2007, it held that the law was generally constitutional. However, the Court invited any

Parenthood Federation of America, raise serious questions about whether Planned Parenthood is complying with the Partial Birth Abortion Ban Act. She describes altering the presentation of a later term unborn child to perform the abortion in such a way as to permit the delivery of the head intact.[44] Nucatola also says that some abortionists choose to use a drug called digoxin because it gives them plausible deniability if a partial-birth abortion occurs in that they can point to the use of digoxin to show that they did not intend to violate the Partial Birth Abortion Ban Act.

> The Federal [Partial Birth] Abortion Ban is a law, and laws are up to interpretation. So there are some people who interpret it [the use of digoxin] as intent. So if I say on Day 1 I do not intend to do this, what ultimately happens doesn't matter. Because I didn't intend to do this on Day 1 so I'm complying with the law.[45]

These comments raise serious questions about Planned Parenthood's compliance with the federal Partial Birth Abortion Ban Act and similar state laws.

Federal law also extends legal protection to a child born after an attempted abortion. 1 U.S.C. §8. Numerous comments captured by CMP illustrate possible violations of the Born Alive Infant Protection Act. In response to the question, "is there still circulation in the heart once you isolate it?," Dr. Ben Van Handel, Executive Director of Novogenix Laboratories said, **"So you know there are times when after the [abortion] procedure is done that the heart**

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abortionist or woman filing a new challenge to show why a partial-birth abortion was necessary in one of those 2200-per-year instances. Planned Parenthood warned of consequences for women's health from the decision, just as Justice Ginsburg wrote in a dissent: "One may anticipate that such a preenforcement challenge will be mounted swiftly, to ward off serious, sometimes irremediable harm, to women whose health would be endangered by the intact D&E prohibition." Eight years later, no such complaint has been filed and thus it appears that there was no basis for the claims that this procedure was necessary for health reasons in any case, much less 2200 such cases per year. One possible explanation for the lack any as applied challenge to the Partial Birth Abortion Ban Act is revealed by Dr. Nucatola's comments – the possibility that abortionists are continuing to perform the prohibited procedures while giving themselves plausible deniability as to "intent" should they be discovered.

[44] *See* http://www.centerformedicalprogress.org/cmp/investigative-footage/ (last visited Sept. 15, 2015).

[45] Id.

actually is still beating."[46] Former Stem Express employee Holly O'Donnell also testified that she personally witnessed a child delivered after an abortion and whose heart would still beat when prompted by a technician.[47] Other comments captured by the videos describe the delivery of fully intact fetuses, raising the prospect of violations of the Born Alive Infant Protection Act and similar state laws.

Conclusion

The states are ultimately responsible for their state Medicaid programs and the providers they approve to participate in them. Even prior to the release of the videos by the Center for Medical Progress, many states had evidence of violations of state and federal laws that would have called into doubt the continuation of Medicaid Provider Agreements with any provider other than Planned Parenthood. Congress can and should reaffirm that the Administration may not coerce the states to contribute taxpayer monies to ethically and legally challenged organizations like Planned Parenthood.

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[46] "Episode 3: Planned Parenthood's Custom Abortions for Superior Product, available at http://www.centerformedicalprogress.org/human-capital/documentary-web-series/ (last visited Sept. 15, 2015).
[47] *Id.*

Mr. PITTS. The Chair thanks the gentleman and now recognizes Ms. Waxman, 5 minutes for your opening statement.

STATEMENT OF JUDY WAXMAN

Ms. WAXMAN. Thank you for the opportunity to testify here today.

I have two points to make today. One, the two bills at issue here today clearly, as you heard already, have a single purpose, and that is to make it easier for State officials to target Planned Parenthood and other women's health providers.

The Medicaid program is rooted in due process protections for both patients and for providers. These bills are not. The two bills would amend Medicaid to allow State officials to exclude a provider from the program if they or one of their employees is simply suspected of violating either of the laws we are discussing today. The standard is unduly vague, and as Congressman Pallone said, it is not the American way.

Two, Planned Parenthood is, in fact, a respected, high-quality provider that provides essential healthcare services for millions of women nationwide. The Medicaid funds that they receive are reimbursement, and I will say even low reimbursement, directly for the services that they are providing these women—family planning services, breast screening, STD screening, et cetera. And by giving States carte blanche to exclude these providers from Medicaid based on a politician's suspicion only, these bills will definitely put the health of millions of women at risk.

The bills before the committee today go dangerously beyond what the law currently provides. Based on a hunch or a rumor, all services the provider offers to Medicaid patients could totally evaporate. There would be no due process or any process at all for determining whether an accusation is true. The bills give unlimited power to exclude a provider without so much as an investigation, evidence to support the accusation, a hearing, court proceedings, an opportunity for the entity to defend itself, or appeal.

The result of giving the States this unlimited power would be that they would be free to wreak havoc on programs that advance women's health, and healthcare services for millions of women, particularly low-income women, around the country would be at risk.

Yesterday's Census Bureau report found that in 2014, fully 20 percent of all women and girls in this country received Medicaid to cover their healthcare services, which explains why Medicaid is so important to women throughout their lives. And because reimbursement rates for Medicaid is generally lower than other payers, there are just not always that many Medicaid providers available.

The role that Planned Parenthood plays is to provide critical, essential care, and that role cannot be overstated. If Planned Parenthood were not available to Medicaid patients, unfortunately, unintended pregnancies and the number of abortions would increase dramatically. As the Guttmacher Institute found, in two-thirds of the almost 500 counties in which Planned Parenthoods are located, they serve at least half of all the women obtaining contraceptive care from safety net health providers. And in many communities, Planned Parenthood is, in fact, the sole safety net provider.

So what would happen if Planned Parenthood was defunded. Well, let's take Texas for example. In recent years, Texas decided to get out of the Medicaid program for family planning services so they could cut Planned Parenthood out of their networks, and as a result other clinics could not handle the deluge of new patients. In Hidalgo County alone, community health centers said they would require a 500 percent increase in capacity for women's health, something they simply could not do. Medicaid claims dropped 26 percent and contraceptive claims dropped 54 percent. That tells me women were not getting care.

Two other programs are cited as having the ability to fill the gap, Title X and community health centers. And while Title X offers critical services to women who need family planning services, it is already woefully underfunded and under severe attack. In fact, the House Appropriations Committee voted just this summer to totally defund this program.

As for community health centers, let's be realistic. CHCs have grown nationwide since the passage of the Affordable Care Act, but they can't handle the patients they have now already, which, in fact, is a good thing. Many more people have insurance. But according to their own accounts, for every patient served at a CHC, nearly three go without access to primary healthcare services. And while some private doctors of course do see Medicaid patients, there will be enough of them, unfortunately, to fill the gap.

These bills give States an unprecedented ability to deny Medicaid enrollees from getting the healthcare services they need from their trusted healthcare provider. It is the women, and particularly the low-income women, that will be the losers if these bills are enacted. Thank you.

[The prepared statement of Ms. Waxman follows:]

TESTIMONY OF JUDY WAXMAN

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON HEALTH

WASHINGTON, D.C.

SEPTEMBER 17, 2015

Good afternoon Chairman Pitts and Ranking Member Green and Distinguished Members of the Committee. Thank you for the opportunity to testify here today about two bills, the Protect Infants from the Partial-birth Abortion Act and the Protecting Infants Born Alive Act.

As a national expert on Medicaid with more than 35 years of experience, I have consulted with hundreds of state and national organizations working to improve the health of low-income women and their families. I have worked as a senior staff attorney at the National Women's Law Center, Families USA and the National Health Law Program. I was a senior policy analyst at the U.S. Bipartisan Commission on Comprehensive Health Care (Pepper Commission) and an attorney at the US Public Health Service. I have lectured all over the country on Medicaid implementation and strategies for enhancing access to all medical services and, in particular, family planning.

The two bills at issue here today have a single purpose – to make it easier for state officials to target Planned Parenthood and other women's health providers. The two bills would amend the statute governing Medicaid to allow state officials to exclude a provider from the Medicaid program if they, or one of their employees, is suspected by the state of violating either Section 1531 of title 18 or Section 8 of title 1 of the United States Code. This standard is unduly vague. It is also unnecessary because the statutes governing Medicaid already provide a mechanism for excluding a provider that has been convicted of a felony under federal or state law.

Planned Parenthood is a respected, high-quality, healthcare provider. They are willing and able to provide essential quality healthcare to millions of women nationwide. Planned Parenthood is a unique and critical health care provider that provides millions of women access to essential health care services, such as comprehensive contraceptive care, STI screenings, breast exams. By giving states carte blanche to exclude certain providers from Medicaid based on a politician's suspicion only, these bills would put millions of women's health at risk.

The Bills Before the Committee Would Impose a "Guilty Until Proven Innocent" Standard

The bills before the Committee today go dangerously beyond what the law currently provides. Specifically, the bills would allow a Medicaid provider to be excluded from the program if the state merely suspects that a provider, or an employee of an entity that receives Medicaid funds, has broken either law at issue. These bills would gut the entire purpose of the "freedom of choice" provision, a critical provision that requires states to allow all qualified providers to participate in Medicaid. These bills would instead allow politicians decide which providers women can see based on the politician's ideology. These bills would deny millions of women the ability to choose a high-quality health care provider for essential health care, and it could leave many of them with no access at all.

The primary impact of these bills would be a further reduction in Medicaid providers. As these bills are written, state officials could exclude a large number of providers with a single "suspicion" of wrong-doing. For example, the bills provide that if an entity employs someone

the state suspects of violating the law, then the entire entity could be excluded from being a participating Medicaid provider. This could mean that entire hospital systems could be denied Medicaid funding. Millions of dollars for life-saving care could be lost just because the state suspects one employee even if that employee actually did not do anything wrong.

There would be no due process – or any process at all – for determining whether or not the accusation is true. The bills give states an unlimited power to exclude any provider without so much as an investigation, a hearing, court proceedings, any opportunity for the entity to defend itself, or evidence supporting its claim.

In addition, there is no mention of notice in the bill, so how would an entity even know what the state suspects? Further, an entire entity could be excluded because it employed someone suspected of having broken the law while working for another employer. How do the bills' sponsors expect the employer to know that information?

In other words, these bills create a "guilty unless proven innocent" standard that allows state officials carte blanche to eject entities from the Medicaid program. Rather than the current legal standard, which allows states to act if there has been a conviction, these bills would allow over-eager state officials to cut off women's access to needed health care services based on mere rumor.

Moreover, the "freedom of choice" provision already contains a qualification that if a provider is convicted of a felony that is inconsistent with the best interest of the beneficiaries, then the broad "freedom of choice" provision does not apply. The statute acknowledges that "nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries."[1] Therefore, the two bills at issue here are not needed as there is already a mechanism to exclude providers for violating the law.

The result of giving states this unlimited power would be that (a) they would be free to wreak havoc on programs that advance women's health and (b) health care services for millions of women around the country would be at risk.

Planned Parenthood Plays a Critical Role in Providing Critical Health Care Services to Millions of Women

The Medicaid program was enacted over fifty years ago to ensure the low-income people have access to critical heath care. A recent Census Bureau report found that in 2014, 20% of all women and girls in the United States received Medicaid to cover their health services.[2] For

[1] 42 U.S.C. § 1396a(a)(23).
[2] Jessica Smith and Carla Medalia, Health Insurance Coverage in the United States: 2014, United States Census Bureau, September 2015.

women, Medicaid has guaranteed that they have access to comprehensive range of services including birth control, maternity care, prescription drugs, hospitalization, long-term care. In this manner, Medicaid addresses women's major health needs throughout their lives.

The Medicaid statute is based on the due process of law when considering who is eligible to receive services and who can provide them. Moreover, Medicaid law recognizes that not all providers will take Medicaid patients. Typically, because the reimbursement rate is lower than in Medicare or private insurance, providers that will see Medicaid patients are not always available. Accordingly, the law specifically allows women to seek care from any provider that will take the reimbursement offered by the state for that particular service. This is called the "freedom of choice" provision, and it is a central piece to the Medicaid program.

The role Planned Parenthood plays in providing critical and essential health care to millions of women cannot be overstated. Our country would face a major public health crisis if Planned Parenthood was excluded as a Medicaid provider. The Guttmacher Institute estimates that 20 million low income women need publically funded contraception care.[3] Accordingly, there is a significant need for comprehensive reproductive health care for millions of women who rely on publicly-funded health care, and the evidence shows that Planned Parenthood greatly fills this need. Excluding Planned Parenthood from the Medicaid program would dramatically impact access to such services for millions.

Planned Parenthood serves a greater share of these safety-net contraceptive clients than any other type of provider. As the Guttmacher Institute has found:

> "[a]lthough Planned Parenthood health centers comprise 10 percent of publicly supported safety-net family planning centers, they serve 36 percent of clients who obtain publicly supported contraceptive services from such centers...
>
> In two-thirds of the 491 counties in which they are located, Planned Parenthood health centers serve at least half of all women obtaining contraceptive care from safety-net health centers. In one-fifth of the counties in which they are located, Planned Parenthood sites are the sole safety-net family planning center. Planned Parenthood offices served about half the needy women in two-thirds of the counties where they have offices."[4]

The facts establish that, in many instances, Planned Parenthood is the sole safety-net provider. They also establish that women vote with their feet, and when they have the option to choose

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[3] Guttmacher Institute, Publicly Funded Family Planning Services in the United States, July 2015, *available at http://www.guttmacher.org/pubs/fb_contraceptive_serv.html.*

[4] Jennifer Frost and Kinsey Hasstedt, Quantifying Planned Parenthood's Critical Role In Meeting The Need For Publicly Supported Contraceptive Care, September 8, 2015, Health Affairs Blog, *available at: http://healthaffairs.org/blog/2015/09/08/quantifying-planned-parenthoods-critical-role-in-meeting-the-need-for-publicly-supported-contraceptive-care/.*

providers, they choose Planned Parenthood. They trust Planned Parenthood and the high-quality health care they provide.

This summer a series of heavily edited and manipulated videos were released in order to malign Planned Parenthood. Forensic experts have established that these videos were heavily edited and manipulated to distort and misrepresent conversations that occurred. And although no charges have been levied against Planned Parenthood for any wrong-doing, several states are once again reviving a 15-year effort to exclude Planned Parenthood from Medicaid programs. But as these states have time and again failed in these efforts to exclude Planned Parenthood, the bills at issue today would provide them the carte blanche to exclude providers just because they do not like them for ideological reasons.

What would happen if Planned Parenthood was defunded for all its family planning services for Medicaid-eligible women? Take Texas as an example. In recent years, Texas decided to refuse federal Medicaid funds for the state family planning program in order to exclude Planned Parenthood from the network. As a result of this exclusion, other clinics have faced a deluge of patients to overcome the lack of providers. Other providers simply could not handle the new patients and many women simply dropped out of the programs. Medicaid claims dropped 26 percent and contraceptive claims dropped 54%. Women are no longer getting care at the same rate that they were before Texas restructured its family planning program to exclude Planned Parenthood.[5]

Other federal-state heath programs are no more prepared than Texas to fill the gaps that would be left if Planned Parenthood is excluded from the Medicaid programs. For example, the Title X family planning program (which supports free-standing clinics, county health departments, and some Planned Parenthood offices, for example) cannot replace the Medicaid funds that could be lost if these bills are enacted. While Title X offers critical access to women in need of family planning services, it makes up 10% of the total public expenditures for family planning services.[6] Additionally, Title X funding is under severe attack, just this summer the House Appropriations Committee voted just this summer to totally defund this program.

Nor can doctors in private practice fill the gap that would be left if Planned Parenthood is excluded from the Medicaid program. Only about 2 million women of the over 19 million who needed publicly supported contraceptive services were provided by private providers who take Medicaid.[7]

In addition, Community Health Centers (CHCs) are often cited as a place women can go to get family planning services. Let's be realistic. CHCs provide a wide range of services for the whole

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[5] Texas Health and Human Services Commission, Texas Women's Health Program: Savings and Performance Reporting, (Jan. 2015), *http://www.hhsc.state.tx.us/reports/2015/tx-womens-health-program-rider-44-report.pdf.*
[6] Guttmacher Institute, Publicly Funded Family Planning Services in the United States, July 2015, *http://www.guttmacher.org/pubs/fb_contraceptive_serv.html.*
[7] Jennifer J. Frost, et al. Contraceptive Needs and Services, 2010, Guttmacher Institute, July 2013.

family, from infant's services to home health for the elderly. While CHCs have seen growth nationwide since the passage of the Affordable Care Act, they cannot keep up with demand as it is.[8] For every patient served at a CHC, nearly three go without access to primary health care services.[9] Moreover, CHCs simply are not set up to offer the same comprehensive reproductive health care that is provided by Planned Parenthood. While CHCs are required to provide family planning services, studies have shown that these services can be limited and variable in quality.[10]

These bills before the Committee today purport to ensure that Medicaid funds do not go to providers that have violated the law. But, the reality is that there are already laws and mechanisms in place to make sure that is the case. Instead, these bills would give states an unprecedented ability to deny Medicaid enrollees from getting the health care services they need from their trusted health care provider. We have already seen how quickly some state officials are willing to act on such a suspicion when it comes to women's reproductive health. It is the women that these providers serve that will be the losers if these bills are enacted.

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[8] Sara Rosenbaum, Planned Parenthood, Community Health Centers, And Women's Health: Getting The Facts Right, Health Affairs, (Sept. 2, 2015), *http://healthaffairs.org/blog/2015/09/02/planned-parenthood-community-health-centers-and-womens-health-getting-the-facts-right/*.

[9] *Id.*

[10] Susan Wood, et al., *Scope of Family Planning Services Available in Federally Qualified Health Centers*, 89 Contraception 85 (88) (2014).

Mr. PITTS. The Chair thanks the lady.

That concludes the opening statements of the witnesses. We will now begin questioning. I will recognize myself for 5 minutes for that purpose.

Before we begin, let me just warn the audience that the pictures that you are about to see are quite graphic. It is important to show exactly what we are talking about here.

So the first clip, please.

[Video shown.]

Mr. PITTS. Let me read those words in case you couldn't hear them: "It had a face. It wasn't completely torn up. Its nose was very pronounced. It had eyelids. Since the fetus was so intact, she said, 'OK, well, this is a really good fetus, and it looks like we can procure a lot from it. We are going to procure a brain.' That means we are going to have to cut the head open.

"She takes the scissors. She makes a small incision right here and goes, 'I would say, maybe a little bit through the mouth.' And she is like, 'OK, can you go the rest of the way?' And so she gave me the scissors and told me that I had to cut down the middle of the face, and I can't even describe what that feels like," end quote.

That is the whistleblower.

Next clip.

[Video shown.]

Ms. CASTOR. Mr. Chairman, I have to object to this. You don't have any context for this. What we understand from all of the investigations is that these are manufactured videos, highly edited, selective. And I would object and say you need to run these by the minority so that we can provide some context.

Mr. PITTS. All right. Now that is the second video, and Dr. Nucatola, the senior director of the Planned Parenthood Medical Services, says, "We have been very good at getting heart, lung, liver, because we know that. I am not going to crush that part. I am going to basically crush below——"

Mr. BUTTERFIELD. Mr. Chairman, point of order.

Mr. PITTS. "I am going to crush"—let me finish, I am on my time, please.

Mr. BUTTERFIELD. I am raising a point of order, Mr. Chairman, to prevent you from going further. Did you rule on the gentlelady from Florida's objection just a moment ago?

Mr. PITTS. Would you please state your point of order?

Mr. BUTTERFIELD. Did you rule on the gentlelady from Florida's objection a moment ago?

Mr. PITTS. I did not.

Mr. BUTTERFIELD. Would you please make a ruling for the record?

Mr. PITTS. She did not state her point of order. Reclaiming my time.

And so it says, "I am going to crush above. I am going to see if I can get it all intact. I would say a lot of people want liver, and for that reason most providers will do this case under ultrasound guidance so that they will know where they are putting their forceps," end quote.

All right. The final clip.

[Video shown.]

Mr. PITTS. All right. This is the clip of the unedited conversation which Dr. Nucatola explains how she plans her day, procedures around the baby's organs she would like to maintain intact. As she plans her day, these babies are not different than anyone else of us, and yet it, frankly, gives me chills to think about how someone could even think about removing their organs.

And so these clips have shown the gruesome reality we are talking about. They are available in the public domain. None of us can forget the images and words that we see when we look at these and the blatant disregard for human life. And no organization, especially one that receives millions of dollars from the Federal Government, should be able to participate in such horrific actions. That is why we are here today, and that is why we are going to act.

The Chair now recognizes the ranking member, Mr. Green, 5 minutes for his questions.

Mr. GREEN. Thank you, Mr. Chairman.

Frankly, this is unprecedented, what you have done, because this is a group, the shadow org called Center for Medical Progress. And let me—what is already in the record, the staff and the memorandum has found, to date the committee has received no evidence to substantiate the allegations that Planned Parenthood has engaged in the sale of fetal tissue for profit.

Furthermore, the committee has received no evidence to support the allegations that fetal tissue was procured without consent, that Planned Parenthood physicians altered the timing, method, or procedure of the abortions solely for the purposes of obtaining fetal tissue, or that Planned Parenthood physicians performed—violated the Partial-Birth Abortion Act in order to preserve fetal tissue for research.

I think this is a new low for our committee. We can't question this video, but I know the group that presented it. And for the last 10 years, this is the 10th attack in 15 years that abortion opponents have used the doctored evidence, and now it has been presented by our chair to a committee.

Now, I want to proceed to my questions.

Professor Waxman, I would like to ask you about the impact defunding Planned Parenthood would have on women's access to life-saving reproductive and primary care services. Unfortunately, this is not hypothetical in Texas. A few years ago, former Governor Perry decided to refuse Federal Medicaid funds for our State planning program in order to exclude Planned Parenthood from its network, which is what the bill talks about.

Mr. Chairman, I would like to ask unanimous consent to enter a House Affairs post entitled "How Texas Lawmakers Continue to Undermine Women's Health," and it is a report by the Texas Health and Human Services Commission on Texas Women's Health Program, which found a 54 percent decrease in contraception claims as a result of the exclusion of Planned Parenthood from its women's health.

Mr. PITTS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. GREEN. Thank you, Mr. Chairman.

Professor Waxman, what was the reason for this exclusion? Do you acknowledge that there is anything wrong with the services Planned Parenthood was providing?

Ms. WAXMAN. It is my understanding that it was simply the administration in Texas that did not want to allow Planned Parenthood to operate anymore and to be able to provide services for women with Medicaid dollars.

Because there was really not a legal way for that to be accomplished, what the Governor did was just simply end the program through which Texas was getting family planning services.

Mr. GREEN. What happened in Texas as a result of the exclusion of Planned Parenthood?

Ms. WAXMAN. What happened was what we have already seen, and you said 54 percent decrease in services, in contraception services——

Mr. GREEN. And that is just not restating it, that is a State agency that did a study on Texas?

Ms. WAXMAN. Yes. And clearly women are not getting the care that they need, and this is a travesty that obviously some want to have happen all over the country.

Mr. GREEN. Do you think the impact of these cuts disproportionately fell upon low-income women?

Ms. WAXMAN. Absolutely. By definition, women who are on Medicaid are low-income, and those are the ones that are bearing the burden.

Mr. GREEN. What do you think about the impact on patients' continuity of care, which again Planned Parenthood provides? As I said before, 90 percent of what they do, at least, is women's health.

Ms. WAXMAN. Absolutely. Planned Parenthood is a trusted provider. About 1 in 5 American women have gone to see a Planned Parenthood. So if you see Planned Parenthood being wiped off the face of the country, one thing that will happen for sure is millions more unintended pregnancies and possibly close to a million more abortions because services will just not be available.

Mr. GREEN. Well, I am from Texas, a native Houstonian, and I am proud of being there. But I really don't want the Nation to do what Texas tried to do.

Mr. Chairman, I would like to yield to my colleague, Congresswoman Schakowsky, for a parliamentary question with the remainder of my time.

Mr. PITTS. The Chair recognizes Ms. Schakowsky for the question.

Ms. SCHAKOWSKY. The questions I would like to ask, Mr. Chairman, whether the committee majority is in possession of the unedited—you claim these are unedited, although the music behind the person I am sure wasn't a part of the scene—from the Center for Medical Progress. A number of our committee members have been quoted in the press as having seen the videos before they were released to the public, and others have referred to the existence of thousands of hours of additional tapes. Is any member of the committee, Mr. Chairman, in possession of any of the unedited videos from the Center for Medical Progress?

Mr. PITTS. The committee is not. They are publicly available. Anyone can access them.

Ms. SCHAKOWSKY. Has any member of the committee majority received any documents from the Center for Medical Progress?

Mr. PITTS. What is the parliamentary inquiry?

Ms. SCHAKOWSKY. The question I was asking, has any member of the committee majority received any documents from the Center for Medical Progress?

Mr. PITTS. All right. The gentlelady's question relates to the investigation taking place in the Oversight Subcommittee. It is my understanding that the minority has received its own copy set of all the documents produced to the committee in response to committee requests, and minority staff has also been present at the briefings and interviews conducted in this investigation. So there is no basis to raise the rule.

And I will at this point recognize Chairman Upton.

Mr. UPTON. Thank you, Mr. Chairman.

I know a number of members have indicated, they have said during the hearing that there is no evidence of wrongdoing. I would just like to make a point that the investigation itself is far from complete. We have asked a number of questions we don't have the answers to yet. We have asked to speak to a number of witnesses, even a good number of weeks ago, and we have not yet had access to those particular individuals. Many are asking for legal counsel.

And to talk a little bit further about that in terms of the record not being complete, which is the reason why we have asked the Oversight and Investigations Subcommittee to pursue this, I would yield to the chairman of that subcommittee, Dr. Murphy.

Mr. MURPHY. I thank the chairman for yielding so I can offer some clarification here, because I feel obligated to take this time, speaking as chairman of the committee's Oversight and Investigations Subcommittee, to address the remarks made by my colleague, the gentlelady from Colorado, regarding the status of the subcommittee's investigation.

Statements have been made to indicate the investigation is complete. It is not. The investigation we are conducting with invitations extended to our Democrat colleagues for every meeting is far from complete. In fact, the Oversight and Investigations Subcommittee is in the preliminary stages—preliminary stages—of its investigation into the practice of procuring and selling the tissue and parts from babies who have been aborted. A few witnesses have been interviewed, and many have not. Some documents have been obtained. Others will be sought and reviewed, and these will be shared.

The videotapes of these practices put very important issues into the public domain. It is our shared responsibility to collect the facts and present sound information to the American people. It is premature to draw any conclusions to this ongoing investigation. It is going to take a thorough investigation to get to the bottom of this practice, and at this point we simply cannot conclude that there has been no wrongdoing.

I yield back.

Mr. PITTS. The Chair thanks the gentleman.

I now recognize the chairman of the full committee, Mr. Upton, 5 minutes for his questions.

Mr. UPTON. I yield back.

Mr. PITTS. The Chair yields back.

Now we recognize the ranking member of the full committee, Mr. Pallone, for his questions.

Mr. PALLONE. Thank you, Mr. Chairman.

I wanted to ask these questions of Ms. Waxman. We are having this hearing today because of a series of videos that purport to show illegal and unethical activity on the part of Planned Parenthood, but what they actually show is something very different.

Professor Waxman, did you know that the first four short videos released by Mr. Daleiden have over 40 separate splices and edits that remove crucial context?

Ms. WAXMAN. I did not know that. I knew they were doctored, but that is an interesting detail.

Mr. PALLONE. Did you know that the edits removed key exculpatory statements, such as, and I quote: "Nobody should be selling tissue. That is just not the goal here." Or second, quote: "This is not a service they should be making money from. It is something they should be able to offer to their patients in a way that doesn't impact them," unquote. Or, quote, thirdly: "We are not looking to make money from this. Our goal is to keep access available."

Ms. WAXMAN. So in other words, the pieces we see are taken totally out of context?

Mr. PALLONE. Right. And the statements where the Planned Parenthood individuals are saying that, you know, that they would not do any of these things have been taken out.

Let me ask you this: Do these seem like relevant statements to include in the videos?

Ms. WAXMAN. I think that given that these videos are clearly doctored and that they are taken out of context, they don't seem really appropriate to be seen here today, to me.

What I do know is that Planned Parenthood has said that only about 1 percent of the activities they are engaged in have anything to do with fetal tissue. And I know fetal tissue research is, obviously, a controversial issue. I think if that is what the concern is, that seems to be another day for another hearing on that.

But in terms of what these videos show, I think without the whole context and without the splicing, I would say I am not sure it shows anything much.

Mr. PALLONE. Did you know that in one of the videos, there are at least 16 substantial unexplained edits, including the removal of nine instances where the Planned Parenthood staff said there is no profit related to tissue donation?

Ms. WAXMAN. Very interesting.

Mr. PALLONE. Does that seem like relevant material to include in the video?

Ms. WAXMAN. I would think not.

Mr. PALLONE. And does it seem misleading and fundamentally dishonest to remove statements like that?

Ms. WAXMAN. I would say it is fundamentally dishonest.

Mr. PALLONE. Now, see, that is why the videos have been denounced as a total crock, distorted, unfair, dishonest, grossly misleading, and politically irresponsible, and swiftboating in editorials across the country. And it is also why a forensic analysis by expert

investigators concluded that the videos have no evidentiary value and cannot be relied upon.

Yet our committee Republicans launched an investigation based on these discredited videos, and now they are using these videos as a pretext for shutting down the Government—and, of course, as part of the hearing today—to say that States cannot allow Planned Parenthood to receive any Medicaid funding.

I just think it is so irresponsible, you know, to use this type of material, false, false material, false videos, inaccurate videos, misleading videos, to make any case at what is supposed to be a legislative hearing.

And, you know, this is what is so upsetting to us on the Democratic side, is that these are presented as if, you know, they have some evidentiary value to make a decision about the legislation that is before the committee, and the fact is that they have no evidentiary value.

And that is why we issued a report a few days ago, I think Ms. Schakowsky mentioned it, saying basically that while it may be true that the committee continues to conduct investigation—at least, you know, the Republicans want to continue the investigation—nothing that has come before this committee gives us any indication that Planned Parenthood has done anything illegal, anything improper. And if they want to use these videos to make that case, then I think the Republicans have to show the unedited version, and that is not what we are getting. And the chairman even said the committee doesn't have the unedited version.

So, you know, this is really a charade. As some of my colleagues on the Democratic side said, it is a new low for a committee that usually operates not only on a bipartisan basis, but also based on the facts and the evidence, and we are not getting the facts and the evidence here today, Mr. Chairman. We are simply not. Thank you.

Ms. DEGETTE. Would the gentleman yield?

Mr. PALLONE. Yes, sure.

Ms. DEGETTE. Furthermore, what I don't understand, if, as my friend Mr. Upton, the chairman, says, the investigation in Oversight and Investigations is far from complete, why now today in the Health Committee's hearing the majority is showing these videotapes that are under the investigation, which the majority now claims is incomplete in the other subcommittee? It is obvious it is just a pretext for trying to move this legislation along, and that is far beneath the standards of this august committee.

I yield back.

Mr. PITTS. The gentleman's time has expired.

We are voting on the floor. We still have 13 minutes, so we will continue. And the Chair recognizes the vice chairman of the full committee, Mrs. Blackburn, 5 minutes of questions.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And I will remind my colleagues, we are not having a hearing today on the tapes. What we are having a hearing on is legislation that will strengthen the ability to keep these children alive. And it is important that we refocus that and return to this.

Yes, these videos are in the public domain now. And we are talking about babies. We are talking about human life. And we are

talking about life rights. And it is important for us to return to that focus.

Dr. Yoest, I would like to come to you, if I may, please. You noted that the Born-Alive Infants Protection Act needed to be strengthened and that there needed to be some criminal penalties put in place that would ensure enforcement. And I would like for you to describe what you see as the weaknesses. I would like to hear from you about what you think we need to do. And then, of course, the legislation that I have brought forward that would address some of those flexibilities for the States.

So if you will take a couple of moments and do that, I would appreciate it.

Dr. YOEST. Thank you, Congressman Blackburn, I appreciate the opportunity to address many of the issues that have been raised. And particularly thank you for your legislation, which I believe is a tremendous first step in the direction of addressing some of these really troubling issues that we are discussing today.

I think one of the things that has been most surprising for many of us in getting into this time period where we have been looking at these questions is many people aren't even aware that the Born-Alive Infants Protection Act, as it was passed years ago, was simply a descriptive bill.

Mrs. BLACKBURN. If I may add there. It passed in 2002 on a voice vote in the House. Go ahead.

Dr. YOEST. It passed in a voice vote here, and in the Senate it was unanimous. And every Senator was present, including Senator Hillary Clinton and many other very prominent abortion right supporters.

So what I think is important to note is that this is an issue that is really common sense for everyone.

Most people aren't aware that there is no penalty attached to not providing humane care for a baby who is born alive after an abortion. And what we see in our work as Americans United for Life is just earlier this year I was invited to testify in front of the Colorado State Legislature, who was looking at a State-based protection for babies born alive. And the Colorado Planned Parenthood came and testified that babies are never born alive after an abortion.

And what particularly, I think, should be a concern to all of us from a human rights perspective is that when a baby is born alive after an abortion, they are at the mercy of someone who has been hired to ensure that their life is not continued.

Mrs. BLACKBURN. Let me interject right there and stop you and ask again, are you aware of cases that have demonstrated that abortion survivors, infants born alive from a botched abortion, that they are killed or denied treatment after birth? Do you know of any cases?

Dr. YOEST. Yes, ma'am. There was a very prominent incident with a pro-life nurse, Jill Stanek, who became pro-life after witnessing a baby that was discarded and set aside and left to perish after being born alive.

And going to the point about the veracity of the videos, I would just argue that what we are looking at is a question of probable cause for investigation. If we have a situation where a whistleblower has had the courage to come forward and state for the

record that she observed a beating heart of a baby after an abortion, I think the burden of proof is then on Planned Parenthood to prove that this is not happening.

Mrs. BLACKBURN. Thank you. I appreciate that.

I have just a couple of seconds left, and I would like for you to weigh in on this. There was a memo circulated to members yesterday, it was a Planned Parenthood memo that warned the Born-Alive Abortion Survivors Protection Act that the House is going to vote on tomorrow, and I am quoting, "rolls back a carefully crafted bipartisan agreement reached in 2002 and would leave"—and I am quoting again— "significant uncertainty about what the bill actually does," end quote.

Would you talk about that just a moment, please, what the bill does?

Dr. YOEST. Well, I think the advantage of having this legislation right now is that it actually clarifies what the situation is. Because to have something as serious as a situation where a person is born alive and it is unclear as to what the approach is to that person's life—for example, Planned Parenthood a couple of years ago testified in Florida when another State-based born-alive bill was being considered, the Planned Parenthood representative was asked what their policy is when a baby is born alive, and she said: Well, that is left up to the doctor.

So this legislation would clarify that if a baby is born alive it is a person and that not providing the humane standard of care that is available to a baby that is born in the same circumstances of timing under any other circumstances, that it is a question of fairness.

Mrs. BLACKBURN. Thank you.

I yield back, Mr. Chairman.

Mr. PITTS. The Chair thanks the gentlelady and now recognizes the gentlelady from California, Mrs. Capps, 5 minutes for questions.

Mrs. CAPPS. Thank you, Mr. Chairman.

In theory, we are here to address two bills, but we have yet to see any reliable evidence to show that these bills are anything more than a quote/unquote "solution in search of a problem."

In reality, though, the problems they would create for women and families across this country are very real. Any sort of chilling effect on women's health providers or barring of Federal grants and reimbursements for preventive healthcare services at Planned Parenthood would affect millions of Americans. And contrary to what some might claim, defunding Planned Parenthood would have a significant impact on the healthcare safety net in our communities.

Professor Waxman, I want to ask you a few questions about how defunding Planned Parenthood would jeopardize women's access to critical health services. Last week in the journal Health Affairs, Professor Sara Rosenbaum wrote a piece describing the potential impact of defunding Planned Parenthood. She wrote, and I quote: "A claim that community health centers readily can absorb the loss of Planned Parenthood clinics amounts to a gross misrepresentation of what even the best community health centers in this country would be able to do. For the millions of poor women who depend on Planned Parenthood clinics, this scenario would mean the

loss of affordable and accessible contraceptive services and counseling, as well as breast and cervical cancer screenings and testing and treatment for sexually transmitted infections. The assertion that community health centers could step into this breach of this magnitude is simply wrong and displays a fundamental misunderstanding of how the healthcare system works."

Similarly, last month, the California Primary Care Association wrote a letter to Senator Boxer about the impact of defunding Planned Parenthood on the Community Health Center Network. In it they say, and I quote: "Eliminating Planned Parenthood from our State's comprehensive network of care would provide untenable stress on the remaining providers. We do not have the capacity for such an increase in care."

This is direct from the providers, who some claim could easily pick up the slack if Planned Parenthood is defunded.

Now three quick questions for you.

Professor Waxman, do you think removing funding for the largest provider of contraception would increase or decrease the number of unintended pregnancies?

Ms. WAXMAN. According to the Guttmacher Institute, it would increase unintended pregnancies by about 2 million.

Mrs. CAPPS. Do you think it would improve or weaken women's access to essential life-saving healthcare services?

Ms. WAXMAN. Clearly, it would be a serious blow to women who need these services through Medicaid.

Mrs. CAPPS. And would this loss of services primarily affect wealthy women or would it disproportionately affect poor and minority women?

Ms. WAXMAN. Disproportionately poor and minority women.

Mrs. CAPPS. Thank you.

Republicans are willfully putting their heads in the sand. They think it is no big deal to shut down hundreds of clinics offering essential services that are not available anywhere else. They may think it is worth shutting down the Government to achieve this goal.

Moreover, I would just like to emphasize, these women have chosen to go to Planned Parenthood for their care. Suggesting they can just get their care from other providers is both callous and condescending. With all due respect to my colleagues on the other side of the aisle, which provider a woman chooses to go to for her reproductive health care is not your decision to make, or at least it should not be.

I yield back.

I am happy to yield to someone—no. I yield back.

Mr. PITTS. The Chair thank the gentlelady, and now recognize the chair emeritus of the full committee, Mr. Barton, 5 minutes of questions.

Mr. BARTON. Thank you, Mr. Chairman. I was going to make a brief opening statement, which I didn't get to, so let me just summarize before I ask my questions.

My lifetime voting record on pro-life issues is right at 100 percent. I consider myself to be a pro-life Congressman. I think every life is precious. I think the Congress should do everything that we can to protect that life. I do recognize Roe v. Wade is the law of

the land, and under that court ruling, I recognize a woman's right under legal conditions to choose to have an abortion.

That is not what this debate is about. This debate is about a procedure that Planned Parenthood utilizes to take body parts and sell. That, I don't think, is in contention. I don't think there is any dispute that this practice is occurring. The question before the committee and to some extent the Congress, should we allow that practice or should we stop that practice? And if Planned Parenthood is the practitioner of that practice, should we stop funding Planned Parenthood because they continue to utilize it? That is the question.

With that, I want to ask Dr. Yoest, does Planned Parenthood provide any service that other women's health organizations could not provide?

Dr. YOEST. Thank you very much for that question, Congressman Barton.

The short answer is no. And I appreciate having the opportunity to address that question, because as a woman and a breast cancer survivor, it is very troubling to me that Planned Parenthood continues to offer themselves as a first-line responder to issues like cancer and particularly breast cancer. They do not provide mammograms. They simply refer out for that service. And on occasion——

Mr. BARTON. I have got limited time.

Dr. YOEST. Sorry.

Mr. BARTON. So Planned Parenthood is not the exclusive provider of services that other women's health organizations can also provide. That is correct, am I not right?

Dr. YOEST. That is correct.

Mr. BARTON. Does Planned Parenthood, under current Federal law, have a guaranteed entitlement right to Federal Medicaid funding?

Dr. YOEST. No, sir.

Mr. BARTON. They do not.

If Congress were to explicitly strip Planned Parenthood funding, are there other women's health organizations already in existence that could accept those funds and provide the same services?

Dr. YOEST. Yes, sir, to a very large degree.

Mr. BARTON. So all of these other women's health services, there are other organizations that don't utilize this procedure that could provide all the services that Planned Parenthood does provide that are for women's health, not for abortion and not for harvesting body parts for sale?

Dr. YOEST. Yes, sir, and they can do it much more comprehensively.

Mr. BARTON. OK. Is there any, on this particular procedure, which I think is immoral and abhorrent, is there any medically necessary reason to utilize that procedure to get a body part to use in another medical situation?

Dr. YOEST. No, sir, there is not. And, in fact, one of the more troubling issues in the videos is that they appear to be changing their procedure in order to get parts that they can then sell.

Mr. BARTON. OK. I assume that you have seen all of these videos. Is that correct?

Dr. YOEST. Yes, sir, myself or my staff.

Mr. BARTON. OK. Now, the ranking member of the full committee, Mr. Pallone, has indicated they have been heavily edited, and that may be true. If he says it is true, I am going to assume that it is true. But what has been made available publicly, to your knowledge, has anybody from Planned Parenthood disputed what has been made publicly available? In other words, has anybody said, "That is not true, we don't do that"? Has anybody at Planned Parenthood said, "We don't conduct these procedures, we don't sell these body parts, we don't utilize this"?

Dr. YOEST. No, sir, not to my knowledge.

Mr. BARTON. So they admit that they are doing it?

Dr. YOEST. Yes, sir.

Mr. BARTON. With that, Mr. Chairman, I yield back.

Mr. GREEN. Mr. Chairman, would you yield just a second?

Mr. BARTON. You can have the 20 seconds that I still have.

Mr. GREEN. I would ask you to look at—when you are questions about can other providers do it, our Health and Human Services Commission in Texas in their report showed that they couldn't provide what Planned Parenthoodhas been doing. And, again, it is not my agency. It is a State of Texas agency.

Mr. BARTON. I respect my friend from Houston, we are good friends. On this one, I am told in Texas there is not anything that Planned Parenthood is doing that other agencies in Texas that are already certified could not also do.

Mr. GREEN. But the report shows they can't do it. So be that as it may.

Mr. BARTON. I yield back.

Mr. PITTS. The gentleman's time has expired.

The Chair recognizes the gentlelady from Illinois, Ms. Schakowsky, 5 minutes for her questions.

Mr. SCHAKOWSKY. OK. I want to just make a couple of things clear.

You know, this is a very, very emotional issue. The issue of abortion is at the heart of this. And I just want to say that when Roe v. Wade passed it was not the beginning of abortions in the United States of America. It was the end of women dying from abortions. Abortions are legal because women will continue to have abortions and make their own decisions. So that is where I am coming from. I want to be clear about that.

The other thing is that these attacks on Planned Parenthood I believe are a baseless smear campaign started with David Daleiden, an anti-abortion extremist, who spent years trying to entrap Planned Parenthood staff and then deceptively editing the videos he reported to stoke partisan anger. Again, I want to just note, I don't walk around with music behind me. Clearly, that was edited in.

Four congressional committees have started investigating Planned Parenthood and States around the country are rushing to investigate. But not merely enough focus has been paid to Mr. Daleiden and his numerous unethical and potentially illegal activities. Mr. Daleiden and his associates obtained their nonprofit status from the IRS by representing themselves as a nonprofit focused on biomedical research aimed at curing life-threatening diseases. They did not indicate that they were an anti-abortion political ac-

tivist organization. They lied on tax forms and applications to the IRS, which is a serious and even criminal, that is under investigation, matter.

The California law prohibits forgery, fraud, and perjury. And Mr. Daleiden and his associates created fake driver's licenses and those may have violated the law. And his activities may have also violated California's Invasion of Privacy Act, its prohibition of false charitable solicitations, and its law against impersonation and Federal and California laws against credit card fraud.

And Mr. Daleiden continues to withhold key information from investigators and the public at large, and his attorneys say he intends to invoke his Fifth Amendment rights to avoid testifying in court. And it seems to me that Mr. Daleiden should release documentation about his organization's funding, affiliations, or practices, and release the full unedited versions of his video.

So I believe that the majority should either suspend its one-sided investigation of Planned Parenthood or should fully investigate Mr. Daleiden. And I just resent the fact that we have been having this hearing using these videos in as explosive way as possible to color the discussion of these bills.

And, by the way, even just the suspicion based on these highly edited videos could be enough then for a State to deny Medicaid funding. And let's be clear, if we want, as Ms. Waxman said, if we want to a discussion about the use of fetal tissue for medical research, then that is a separate conversation, used for investigating Alzheimer's and diabetes.

And there is no proof, in fact I think there is proof to the contrary, that Planned Parenthood made a profit on this. It was in order to transport the tissue with the consent of the woman and done to pay for the transportation.

I want to ask a question, though, just a quick yes or no of Dr. Yoest and Mr. Mattox. The Hyde amendment does have exceptions that would have exceptions including rape, incest, and endangering the life of the mother. I would like to know if you support exceptions to the Hyde amendment in the case of rape, incest, or endangering the life of the mother?

Dr. Yoest.

Dr. YOEST. Would you mind clarifying the context?

Ms. SCHAKOWSKY. The Hyde amendment.

Dr. YOEST. Right, but how you are applying it in this situation?

Mr. SCHAKOWSKY. I am asking you a question as testimony relevant to these issues, these two bills that are before us, and I would like to know if you believe that there ought to be exceptions to abortion?

Dr. YOEST. Americans United for Life was the organization that defended the Hyde amendment in front of the Supreme Court.

Mr. SCHAKOWSKY. So is the answer yes?

Dr. YOEST. We strongly support the Hyde amendment and we support the law as it is written.

Mr. SCHAKOWSKY. OK. And Mr. Mattox.

Mr. MATTOX. I strongly support the law as it is written.

Mr. SCHAKOWSKY. Thank you. I yield back.

Mr. PITTS. The Chair thank the gentlelady.

We have no time left. There are 100 people who still haven't voted. So we will recess for five votes on the floor. We will reconvene approximately 5:20. The subcommittee stands in recess.

[Recess.]

Mr. PITTS. All right. The subcommittee hearing will reconvene. And the Chair recognizes the vice chairman of the Health Subcommittee, Mr. Guthrie, 5 minutes for questions.

Mr. GUTHRIE. Thank you, Mr. Chairman.

I want to begin by saying how I am disgusted with the videos that we saw. And I know every time it comes up, people are saying: Oh, if you see them on TV, or wherever, they are highly edited and they are out of context.

But as Mr. Barton asked and we found out, that nobody is debating the quotes that are in there. I mean, we need to look at the whole video, I agree with that. Nobody is debating the quotes. And those quotes, I am not sure you can take those out of context. I am not sure what context those are acceptable. And I am sorry just to hear that.

First, I want to ask Mr. Mattox. In your testimony you say the courts have upheld the rights of a State to exclude, quote, "an entity from its Medicaid program for any reason established by law," unquote. Can you elaborate on that?

Mr. MATTOX. Sure. Under the Medicaid Act—and the legislative history of Medicaid Act also makes this very clear—the Federal Government has certain bases that it can exclude providers, but States are much more free. States can exclude for any other reason, is the term used in the Medicaid Act. They have a lot more power than the Federal Government does to exclude. And so States have excluded Medicaid providers on a number of bases that aren't set out for the Federal Government to exclude.

That includes, in the Ninth Circuit—and I am not typically in the position of citing decisions from the Ninth Circuit—but in the Ninth Circuit, in Guzman v. Shewry, the court held that during a pending investigation, that a provider can be excluded.

What that recognizes is that there is no liberty interest or a protectable right that Planned Parenthood or any other provider has to continuing to receive Medicaid funds. That is a privilege that they need to be able to earn from the taxpayers. They can go through an administrative process to appeal that if they would like to. But they don't have a right during a pending investigation to continue to receive those funds.

And I think if you step back from this for a moment and imagine that we are talking about something other than Planned Parenthood, that that is a self-evident proposition. The idea that a Medicaid provider that, for example, is a gynecologist that has been accused of abusing women, the idea that we would require that Medicaid continue to provide funding to that doctor until a jury actually convicted them would be abhorrent to most people. So that is not the rule——

Mr. GUTHRIE. I would like to continue with a couple more questions for you, if I can continue.

Mr. MATTOX. Sure.

Mr. GUTHRIE. Your testimony also outlines a number of categories of misconduct from Planned Parenthood, and my under-

standing, most of these, in your testimony, were not from the videos. There were other things that you cited. All of which seems to be ground for State Medicaid programs to exclude that Planned Parenthood provider, clinic, or affiliate.

What have States done to exclude Planned Parenthood in the Medicaid program?

Mr. MATTOX. States have acted in several ways. First of all, Texas actually made a decision to exclude Planned Parenthood from its Women's Health Program, which is a Medicaid waiver program.

Interestingly, when it made that decision, I have heard some discussion about that here today, Planned Parenthood excluded them, and the number of contraception claims did immediately drop, but the actual pregnancy rate in Texas declined, as did the abortion rate in Texas. So we haven't seen in Texas the sort of public health catastrophe we were told to expect.

But Texas has done that. Indiana has also taken action, as well as Arizona. And the Federal Government stepped in and told them they were no longer permitted to act in that way to manage their own Medicaid programs because Planned Parenthood was involved.

Mr. GUTHRIE. Which leads to my next question, is that you also note that, quote, this is from your testimony, "Medicaid providers cannot usually rely on the support of the Federal Government, including reinterpretation of the Medicaid Act, when a State disqualifies them from its Medicaid program. Planned Parenthood is a unique case."

Can you elaborate on this?

Mr. MATTOX. Sure. There have been over the last two decades or so about 9,000 providers excluded from Medicaid, and in most of those cases they are completely uncontroversial. People don't question that at all. When it is Planned Parenthood, however, you have the Center for Medicaid Services reinterpret the Medicaid statute to deny States the opportunity to exclude those providers. That is a privilege that other providers don't get to have.

Mr. GUTHRIE. Thanks. And discovering that a provider violated Federal laws related to fetal tissue procurement certainly sounds like a provider failing to act in an ethical manner and should be grounds to terminate their status as a provider. Can you elaborate on that statement?

Mr. MATTOX. Sure. That is actually from a decision from the Seventh Circuit decision. The Seventh Circuit clarified that while an entire class of providers couldn't be excluded, but when you are talking about the State's power to exclude an individual provider, that the State absolutely had the authority to exclude not only on legal grounds, but also on ethical grounds a provider, which I would think most of us would think is a good thing.

Mr. GUTHRIE. In my last 10 seconds, I am just hopeful that we can clarify the Federal law, ensure States are able to allow or exclude providers from their Medicaid program.

I thank you for the witnesses being here, and I yield back.

Mr. PITTS. The Chair thanks the gentleman.

Now recognize the gentlelady from Florida, Ms. Castor, 5 minutes for questions.

Ms. CASTOR. Thank you.

Well, I respect my colleagues and my neighbors and many Americans have deeply held beliefs on the issue of personal health matters. But that is not what this is about. Today we are spending our time on a politically manufactured distraction. Republicans in Congress hope that you will be distracted from their failure to meet their fundamental responsibility of passing a budget because we are 6 legislative days away from shutting down the Government.

But make no mistake about it, this is also an insult to women and families all across America. I am very disappointed in this committee, Mr. Chairman, very disappointed, because this committee is party to lies, a smear campaign on Planned Parenthood, doctored videos. I objected early on because a few weeks ago press reports established the fact that the Center for Medical Progress, that video that you showed, was wholly inaccurate, and they said it was inaccurate, and you showed it anyway.

And I will read from the Christian Post: "The Center for Medical Progress clarified that in its most recent video, the baby depicted is from a stillborn birth." It is not a second trimester baby from Planned Parenthood. And I would have to think that your professional staff and maybe even some of the members on your side knew that. It was reported in the Christian Post. It was reported in The Hill. It was reported in other publications.

You know that stillborn baby, where that picture came from? It came from the blog of the grieving mother. It is not what you purported it to be. It is not what this group that is smearing and putting out these doctored videos said that it was. And the committee should not be a party to that.

I will submit for the record these press reports and ask that you please read them.

But you know, this is a disturbing pattern, and I wanted to focus also on what has happened in my home State of Florida. Because in July, after these videos surfaced, my Republican Governor, Rick Scott, ordered an investigation of all Planned Parenthood clinics across Florida, not other clinics, and it was determined, after investigation by the Agency for Health Care Administration, that there was no "there" there.

What happened subsequently falls into this pattern of doctoring evidence and distortions. You see, the Agency for Health Care Administration then put out a press statement, a press release, to establish the fact, and here is their language, they put out a press release, said, "Our investigation last week into Planned Parenthood clinics," blah blah, blah, "however, there is no evidence of the mishandling of fetal remains at any of the 16 clinics we investigated."

But the press, the reporters in Florida did a public records request after the final press release came out that omitted this line, and it turns out that the press shop in the Governor's office took the Agency for Health Care Administration's press release and scrubbed it of that finding.

Just yesterday, the communications director from the Agency for Health Care Administration resigned. I am sure the Governor was not happy with the fact that emails were discovered by the press in Florida where the communications director said, "I would have thought a line on no handling of fetal remains would be included, as that is what questions will be on." The agency's secretary said

agrees with the comment. Reporters subsequently obtained both versions, and it has been uncovered the Governor's office scrubbed it. He orchestrated the whole thing. This is part of a very disturbing pattern all across the country based on manufactured evidence, lies, and a smear campaign.

It is beneath the dignity of this committee. It undermines the important work we do to ensure women's health care, and I would hope that everyone would disavow what is happening here, this smear campaign on women's health and the clinics they rely on.

I will yield the remaining time to Mr. Green.

Mr. GREEN. Thank you.

Ms. CASTOR. Oh, excuse me. I will ask unanimous consent that those be admitted into the record.

Mr. PITTS. Without objection, these will be made part of the record.

[The information appears at the conclusion of the hearing.]

Mr. GREEN. I would like to ask questions of Dr. Yoest and also Mr. Mattox and even Ms. Waxman. There is a report I submitted from the Texas Health and Human Services Commission, and your testimony in question said that there was no results. I want to call your attention to it.

And I am going to read it, Mr. Chairman. This is by a State agency that did a study on what happened after 2011. We actually saw a 25 percent drop in clients served in the Human Health Services Commission area, 25 percent loss from '11 to '13. So somewhere along the way, a lot of women, in a time Texas was growing, are no longer getting healthcare services in every region except the Upper Rio Grande Valley. The High Plains area, a loss of 53 percent, West Texas, a loss of 64 percent of services, people getting services.

So there is a problem here. And, Mr. Chairman, again, I am going to use this every time I get a chance because your testimony does not go with the facts that a Texas State agency used.

Mr. PITTS. The gentleman's time has expired.

The Chair recognizes the gentleman, Dr. Murphy, 5 minutes for questions.

Mr. MURPHY. Thank you. I am going to yield to Mr. Shimkus.

Mr. SHIMKUS. I thank my colleague.

And these are difficult issues, and I think, as I told some of the folks on the panel, those of us who are pro-life and vote that way who have served many, many years, we are saddened that these things still occur in our country.

On Tuesday, I did a press conference tour of my district outside three Planned Parenthood clinics. Tuesday. One was closed, wasn't even open. So I want to talk about the access to care issue a little bit.

But before I do this, some of this moral outrage, and one of the benefits of being a MSember for a long time is you have the benefit of history. And we had a hearing when Republicans were in the minority on secret videos taken in a meatpacking plant. Downed cows. There was more outrage over the treatment of downed cows than we have of treatment of downed kids, babies. And there was no objection to the videos being presented. In fact, they didn't even

call the video people to the hearing. It is just unfortunate that, again, I do think there is a double standard.

And also I want to mention the healthcare aspects. The other thing I did in Illinois, why I went to them is because federally qualified healthcare clinics in Illinois, we have 670 better alternatives for women's health care and only 18 Planned Parenthood locations. So this debate about our ability to affect women's health care, in fact, by these bills that we are going to move through the House, we are going to be able to provide better care because Planned Parenthood clinics don't provide all the range of health care.

I am not a supporter of the Affordable Care Act, I didn't vote for it, I don't believe in it, I think it was terrible, but the premise of the Affordable Care Act was medical homes for people could go to have a medical home and a medical location for records. Guess where your medical home is? It is not in a Planned Parenthood clinic. Your medical home is found in a federally qualified healthcare clinic.

So we are on the right track if we move this debate to improving access to health care, expanding federally qualified healthcare clinics, rural clinics, in my case. I am in southern Illinois, three Planned Parenthood versus 40 accesses to rural care or community health clinics.

Mr. Mattox, the question I have, going back to the videos, do you believe these videos actually depict Planned Parenthood's practices?

Mr. MATTOX. I believe—first of all, you actually have a letter from Cecile Richards, which I assume is an unedited letter from Cecile Richards, in which she actually says that Planned Parenthood is receiving $60 per part. At no point in that letter does she also say how they are actually accounting for that, how that applies in some way to any actual expenses. And remember that StemExpress, at least, is actually coming into the clinic. I have often seen the citations to, well, these are situations where, you know, this is compensating for transportation or storage. Well, it is not compensating for transportation or storage in those cases. And that is outside of the videos.

The full versions of these videos, let's be absolutely clear, if you have access to YouTube, you have access to the full versions of these videos. They are on YouTube. I know that because I have watched the full versions of the videos. They are there. As a matter of fact, without music.

So you can watch the full versions of the videos. The only portions of the videos that have been edited out are the portions when Mr. Daleiden or someone is in the bathroom, and I think we can all be grateful that he edited those portions out, and the portions where no one else is in the conversation, where it is him sitting alone or otherwise. So the full versions are available.

Mr. SHIMKUS. In follow-up, do you think States should be able to take action on these videos?

Mr. MATTOX. Absolutely. The Guzman case in the Ninth Circuit indicates that States do not have to wait when they have reasonable belief that the law has been violated. They can suspend a

Medicaid provider without having to have that person convicted by a jury.

Mr. SHIMKUS. Thank you.

And I am just going to finish by, obviously there is a list of services provided under federally qualified healthcare clinics versus those services provided by Planned Parenthood. The services provided by Federal healthcare clinics, family homes, far outweigh anything provided at the Planned Parenthood clinics. And I yield back my time.

Mr. PITTS. Did you say you wanted to submit that for the record? I didn't understand.

Mr. SHIMKUS. No, I didn't.

Mr. PITTS. All right. The Chair thanks the gentleman and now recognizes Ms. Matsui, 5 minutes for questions.

Ms. MATSUI. Thank you, Mr. Chairman.

First of all, I just want to point out that you are saying that these are—people have said that there are unedited videos out there, but we don't have any proof that they are unedited videos. So that is just out there. We don't believe that they truly are unedited. And I want to go back to my questions here.

Now, Professor Waxman, I am going to get back to these radical bills. Each gives States the power to cut off funding to any provider that is, quote, "suspected of violating the partial-birth abortion ban or causing the termination of an infant born alive." I want to see if you can help me understand what this evidentiary standard might mean in practice.

If these bills became law, could a State that suspected a health center was violating these laws based on an anonymous tip cut off funding?

Ms. WAXMAN. I believe so, yes.

Ms. MATSUI. Could a State that suspected a violation based on doctored videos released by an anti-abortion extremist cut off funding?

Ms. WAXMAN. I don't see why not.

Ms. MATSUI. Does the legislation say anything about what evidence a State must provide to satisfy the standard for suspecting a violation?

Ms. WAXMAN. No, it does not.

Ms. MATSUI. Does the legislation say anything about the due process a State must provide before it cuts off funding?

Ms. WAXMAN. No, it does not.

Ms. MATSUI. Well, these bills would give State politicians who are opposed to abortion free rein to slash funding for women's health care based on nothing more than their own political views and a suspicion. Do you agree with that?

Ms. WAXMAN. Definitely.

Ms. MATSUI. Let me ask you another question. What do you think the impact of these bills would be? Would States start slashing funding for women's health centers? Would access to reproductive health care increase or decrease?

Ms. WAXMAN. I think the goal of this particular legislation is clearly to go after Planned Parenthood and other—I will assume, although it hasn't been mentioned—other healthcare providers that perform abortion. This bill is about abortion.

There could be, you know, a hospital system in your State where in fact the hospital does do abortion, and it could very well happen that a politician might have some suspicion that there was wrongdoing in that hospital system, and then the whole system loses its Medicaid funding, all the services that it would provide.

There is in the Medicaid statute already, as has been testified, ways that if someone is convicted of a crime that would hurt the beneficiary of the program, they can then be excluded from the program. That is already law. If somebody would break the law, and that is actually be convicted of a partial-birth abortion, that already exists. If someone is convicted in a State, and I assume the State law would have laws against terminating a live birth, that person could be excluded.

Obviously, due process protections would apply, but if someone really did break these laws, the provisions already exist to exclude that provider from the program. And putting a law out there that just makes the suspicion the cause for ending Medicaid funding goes way, way beyond any law, I believe, in the whole country.

Ms. MATSUI. OK. Now, the majority continues to claim that current Planned Parenthood funding could be redirected to existing community health centers and that with this additional funding these community health centers could adequately absorb the increased demand that would inevitably follow if Planned Parenthood were to close its doors.

Can you describe if there are enough clinics, if there is adequate capacity in existing the healthcare system to absorb all of Planned Parenthood's patients?

Ms. WAXMAN. There seems to be, I think, some talking across each other in that Planned Parenthood does not get blocks of money from Medicaid to do whatever it wants. Like any medical provider, like a private doctor, if they perform a service that is covered for a covered individual, then they get reimbursed, and, again, generally, at a pretty low reimbursement, unfortunately.

So it isn't as if there is some kind of pot of money that is helping them exist. They are professionals that do these very high-quality services in this area. And if people come to them that have Medicaid or private insurance, that is the reimbursement that they get.

Now, the community health centers have already said that they don't have the capacity right now to actually provide care for the patients that are coming their way. They have said, for every patient they serve, another three are going without primary care. We would have to enormously increase the number of community health centers if we really wanted to make sure the capacity was there.

Ms. MATSUI. Well, thank you.

Ms. WAXMAN. Additionally, as I mentioned in my testimony, there is a public program, Title X, that gives dollars for family planning. This body, the Appropriations Committee has already zeroed that out in the next budget, so we wouldn't be able to count on them.

Ms. MATSUI. Well, thank you very much. My time has run out.

Mr. PITTS. The Chair thanks the gentlelady, and now recognizes Dr. Burgess, 5 minutes for questions.

Mr. BURGESS. Thank you, Mr. Chairman. Mr. Chairman, you began your questioning by showing us three film clips, and in that third film clip where the discussion was "you crush above, you crush below, and you get the part that you want in between," and this was all done under sonographic guidance, I would just ask, Mr. Chairman, I do want the committee, the subcommittee, to make an effort to retrieve any ultrasound electronic media that may have been created during the performance of these procedures because I believe it could be instructive to the subcommittee to actually have that.

Dr. Yoest, let me just ask you. Is your organization affiliated with the Texas—is there a Texas organization that is an adjunct of yours? Texas Alliance for Life, is that associated with you?

Dr. YOEST. No, sir.

Mr. BURGESS. OK.

Mr. Chairman, I do want to submit for the record an article that discusses the Texas Alliance for Life. This is a PolitiFact article where the leader of the Texas Alliance for Life asserts that funding for women's health is actually at an all-time high in the State of Texas.

His statement was taken to task by PolitiFact. And as we know, they tend to be relatively left leaning. But the conclusion—and I do want to submit the entire article to the committee—the statement that was made that in Texas funding of women's health services is at historically high levels. And they have just increased their level another $50 million for the next 2 years.

And, again, Texas lawmakers this year voted to appropriate more for women's health services than before, including a $50 million bump. And I would just parenthetically add, it was my State senator, Senator Jane Nelson, who is the chairwoman of the Senate Finance Committee, who was responsible for that $50 million bump.

But the bottom line on this PolitiFact article is, "We rate this claim to be true." And again, PolitiFact is not always friendly to conservative causes.

Mr. PITTS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. Now, Mr. Mattox, Mr. Green has been talking about a report from the Health and Human Services Commission from January of 2013. Do you have that report? Are you familiar with that?

Mr. MATTOX. I have seen that report. I have read that report.

Mr. BURGESS. And I guess that I am confused, because Mr. Green is sort of outlining a case where Texas is in pretty dire straits as far as being able to provide services, and, gosh, if we go after any one dime in Planned Parenthood funding it is going to create all kinds of havoc in the State of Texas.

But this article or this report that he is referencing, here is the conclusion: "Overall, the Texas Women's Health Program patient capacity survey results are positive. In most areas, the survey found that the State has the capacity to serve even more women in 2013." Remember, this was done in response to the fact that Governor Perry in 2011 said we are not giving any money to Planned Parenthood.

"Capacity was especially robust in the Rio Grande Valley, San Antonio, Houston, Austin, and the Abilene areas. The survey identified one area, San Angelo, where there was likely a capacity deficit." But it is not really—the tenor of the report is not exactly that which was portrayed by the ranking member of the subcommittee.

So do you have any thoughts on this report that has been talked about at some length today and what the state of these services are in the State of Texas?

Mr. MATTOX. Certainly. Texas' experience is that after Planned Parenthood was excluded, there was a very initial period where Texas had difficulty trying to find the right providers. They found those providers. And the result now in Texas is that—and these are uncontroversial conclusions from the State—the abortion rate has declined in Texas, the pregnancy rate has declined in Texas. So that has happened.

What we found is that when Planned Parenthood was taken out of the picture, the abortion rate and the pregnancy rate declined. Whether that is causation, I don't know.

But one reason why you might have seen the drop in claims actually submitted, another audit was just filed in March this year from HHS OIG that found another $129 million in overbilling to the same Women's Health Program, the same Texas Women's Health Program by Planned Parenthood.

So it very well may be that a lot of these contraceptive claims that Planned Parenthood was no longer filing were claims that they never should have been filing in the first place.

Mr. BURGESS. It is an interesting point and one that I, again, I think does deserve further study by this subcommittee. And I hope we have an opportunity to do that.

But let me just ask you: Is it really that unusual for CMS to withhold funding in an area where they think something is amiss? Is this really a drastic departure from any normal behavior by CMS?

Mr. MATTOX. Well, for CMS to act this way, it certainly is. For a State to act that way, no. For CMS to say we are no longer going to allow a State to make a decision about its Medicaid program because you have excluded a provider is a very new thing, and it is something that they have done with respect to Planned Parenthood, and I am not aware of any other provider that has received that kind of treatment.

For a State to act that way and say we are going to exclude certain providers because we think they are in violation of the law, States do that with some frequency. And there should be no question as to a State's power to do that, not only when there are convictions, but I would hope we could all agree that when a provider is suspected of fraud, as was the case in the Guzman case, that we are not going to require the Government to continue to provide taxpayer money to an organization suspected of fraud, for example, while we find out if they are actually going to be convicted of that.

Mr. BURGESS. Thank you, Mr. Chairman. I yield back.

Mr. PITTS. The Chair thanks the gentleman.

I now recognize the gentleman from Massachusetts, Mr. Kennedy, 5 minutes for questions.

Mr. KENNEDY. Thank you, Mr. Chairman.

Dr. Yoest, did you use the videos that were shown earlier at this hearing as part of your investigation?

Dr. YOEST. I am sorry?

Mr. KENNEDY. Did you use the videos that were shown as part of this hearing in your investigation that you quoted, and you got a chart put up earlier detailing the investigation that you have entered into to try to say that Planned Parenthood engaged in these activities?

Dr. YOEST. I consulted the videos in putting together the chart, yes.

Mr. KENNEDY. OK. Did you ever conduct an analysis of the authenticity of those videos?

Dr. YOEST. Of the authenticity of the videos. As the chairman stated, the full videos are available online——

Mr. KENNEDY. Did you conduct——

Dr. YOEST [continuing]. And our team has reviewed the full videos that are available online.

Mr. KENNEDY. So the full videos, not the videos that we saw then up here, but the full videos, you say, you didn't, and that informed your investigation.

Dr. YOEST. Yes. And we have submitted to the Energy and Commerce Committee a 28-page legal analysis of the full videos.

Mr. KENNEDY. Of the full videos. OK. Thank you.

Do you have any idea how many, currently, how many House committees are conducting investigations of Planned Parenthood?

Dr. YOEST. I believe it is three. Three here and one in the Senate.

Mr. KENNEDY. And do you have any idea how many States are conducting independent investigations of Planned Parenthood? I will give you——

Dr. YOEST. It is 12ish.

Mr. KENNEDY. Twelveish is fine. Do you have any idea of how many of those in total 16 investigations have resulted in criminal charges to date?

Dr. YOEST. With all due respect, sir, I think it is still really early——

Mr. KENNEDY. To date, ma'am.

Dr. YOEST [continuing]. With an investigation that is—as it was stated earlier——

Mr. KENNEDY. Zero is the answer, right?

Dr. YOEST [continuing]. Investigations are still ongoing.

Mr. KENNEDY. So I believe that is an answer, then zero, correct?

Dr. YOEST. So far.

Mr. KENNEDY. OK.

Ma'am, it has been a little while since I was trying cases. You mentioned in response to a question to one of our colleagues that the burden of proof would be on Planned Parenthood to try to disprove part of the allegations that were being made. Under what theory of criminal law would the burden of proof shift to them to disprove the allegations that a criminal charge would be brought?

Dr. YOEST. Can I clarify what my comment was?

Mr. KENNEDY. Please.

Dr. YOEST. My assertion would be that the burden of proof is on Planned Parenthood to respond to something that is as serious an

accusation with evidence that is as troubling as what we have seen to having their senior medical director on tape saying that she considers the law to be a suggestion——

Mr. KENNEDY. But the burden of proof is not in a criminal sense at all.

Dr. YOEST. Pardon?

Mr. KENNEDY. Not in a criminal sense at all, because if a charge is brought criminally, the burden of proof—I am asking you what legal theory—under what legal theory does the burden of proof shift to a defendant?

Dr. YOEST. I wasn't asserting a legal theory. I was asserting common decency.

Mr. KENNEDY. OK.

Mr. Chairman, I would like unanimous consent to enter into the record from the National Women's Law Center and the National Health Law Program a letter about the role of Medicaid in ensuring low-income women's access to health care. The letter, Mr. Chairman, states, quote: "It is no overstatement to say that if H.R. 3134 were to become law, our country would face a significant public health crisis."

Mr. PITTS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. KENNEDY. Thank you.

Ms. Waxman, I have about a minute and a half for you. A couple of questions.

Mr. Mattox had indicated in his testimony that States are permitted to suspend Medicaid providers during the pendency of an investigation into whether a provider violated a State or Federal law. Is that your understanding as well?

Ms. WAXMAN. I think what he is referring to is this one case that he has mentioned a couple times where in fact there was one individual in an egregious situation and one circuit court that said it was OK to suspend the individual's Medicaid payment during that time. But beyond that, I don't think so.

Mr. KENNEDY. And, Professor Waxman, in your expertise and review of this legislation, do the bills in question define what "suspicion" means?

Ms. WAXMAN. No, it did not.

Mr. KENNEDY. So to clarify, a provider system or healthcare system under this legislation could potentially lose Medicare dollars on the suspicion that one of its doctors or medical providers had violated some aspect of what this legislation contemplates.

Ms. WAXMAN. That is right.

Mr. KENNEDY. The entire system.

Ms. WAXMAN. That is right.

Mr. KENNEDY. So in other words, is it fair to say that these bills undermine the "any willing provider" principle of Medicaid regulations as well as due process?

Ms. WAXMAN. Without a doubt.

Mr. KENNEDY. So, ma'am, in your opinion, is that what happened last month in Louisiana when the State terminated its agreement with Planned Parenthood Gulf Coast provided that it does not provide any abortion services at all and was found to be in compliance

with all State and Federal law, and were due process principles and the "any willing provider" principle violated there?

Ms. WAXMAN. Yes. The "any willing provider" provision, because there aren't that many Medicaid providers, that is why the law recognizes anyone who is willing to take that reimbursement should take patients, any qualified provider, of course, and that is why Louisiana could not eliminate Planned Parenthood.

Mr. KENNEDY. Thank you. Yield back.

Mr. PITTS. The Chair thanks the gentleman.

Now recognize the gentleman from New Jersey, Mr. Lance, 5 minutes for questions.

Mr. LANCE. Thank you, Mr. Chairman.

Mr. Mattox, you stated in your testimony that you explained how CMS issued a new set of interpretations based upon the existing statute. The new interpretation was in 2011 related to States' use of qualified medical providers. Could you explain in a little more detail what CMS did and your reviews on what CMS did in 2011 based upon an underlying statute that predates 2011?

Mr. MATTOX. Sure. What CMS did was to interpret—issue an interpretation of the Medicaid Act to say that States could not exclude a provider where it would violate this "free choice of provider" provision, applying that specifically—or a class of providers—applying that specifically to decisions made by Indiana and later Arizona to exclude abortionists broadly.

More recently what CMS has done is to take that decision, saying that you can't exclude a class of providers, and apply it to a State's decision to exclude an individual provider in Planned Parenthood.

Mr. LANCE. Yes. Ms. Waxman or Professor Waxman or Dr. Waxman, is that your understanding of what occurred with the CMS in 2011?

Ms. WAXMAN. Yes. I don't know what the last item he was referring to, but certainly before that, in the earlier date, that is true.

Mr. LANCE. Thank you. So I am trying to reach a situation where we can agree on what the state of the law is before we change the law, and it is my view that everybody on the panel should have the opportunity to speak. I think you have been before this panel before, and that has been my position before.

Now, in the wake of CMS' 2011 interpretation, the Seventh and Ninth Circuits have held, on the basis of Medicaid free choice and qualified provider provision, that States may not exclude an entire class of otherwise qualified providers. Is that accurate? Do you both agree with that?

Ms. WAXMAN. Yes.

Mr. MATTOX. Yes.

Mr. LANCE. However, as I understand it, also that the courts have ruled that a provider can be excluded so long as it is not based upon an entire class. And I cite Planned Parenthood v. Indiana, of Indiana v. Commodore, is that right, is that the case, Mr. Mattox?

Mr. MATTOX. Commissioner.

Mr. LANCE. Commissioner. I guess because one of my degrees is from Vanderbilt, the Commodores. And that was the Seventh Cir-

cuit, and the cert was denied by the Supreme Court of the United States. Is that accurate?

Mr. MATTOX. That is correct, yes, sir.

Mr. LANCE. And so that stands as the law in the Seventh Circuit. Is that the law in any other circuit or has only the Seventh Circuit ruled on this?

Mr. MATTOX. Only the Seventh and the Ninth Circuit have ruled on that.

Mr. LANCE. And the Seventh Circuit is in the Middle West and the Ninth Circuit is in the West.

Mr. MATTOX. Right.

Mr. LANCE. And so we have two circuit decisions that have permitted the disqualification of individual providers based upon the views of the State Government.

Mr. MATTOX. Well, those two decisions said that you couldn't exclude an entire class of providers. What the Seventh Circuit then went on to say was that the State does have very broad power, much broader than the Federal Government, to exclude an individual provider——

Mr. LANCE. Yes.

Mr. MATTOX [continuing]. For both legal and ethical reasons.

Mr. LANCE. And that is a decision, according to those circuits, or at least the Seventh Circuit, that can be made, and it is not a standard of proof based upon the criminal standard of proof, that States have broad discretion in this regard.

Mr. MATTOX. That is correct.

Mr. LANCE. And so we are not discussing here proof beyond a reasonable doubt, the criminal standard that, quite appropriately, applies in this country and should continue to apply regarding all matters of indictment for a criminal offense. We are not in that area of law regarding the broad discretion of States, under the sovereign power of States. And I come from a State legislature, I was the minority leader, and I believe in the powers of States, comity with what we do here, and certainly the courts have ruled, to the extent that they have ruled, that States have broad discretion in this regard. Is that accurate?

Mr. MATTOX. That is correct. And in this case you actually have a—you know, this a question of whether a provider is entitled to Government money. They are not entitled to Government money.

Mr. LANCE. This is not a situation where they are entitled. States have broad discretion.

With 12 seconds to go, my point, Mr. Chairman, is that I believe in the power of States to have broad discretion, and I would hope that that might be the rule, if it were to be established by the Supreme Court, if this were ever to reach the Supreme Court. Thank you, Mr. Chairman.

Mr. PITTS. The Chair thanks the gentleman.

Now recognize the gentleman from California, Mr. Cárdenas, 5 minutes for questions.

Mr. CÁRDENAS. Thank you very much, Mr. Chairman.

Witnesses, I only have a short period of time, so I would appreciate yes-or-no answers to my questions.

Congress is remarkably transparent. You can see the cameras filming us right now, and you can watch us on C–SPAN when you

get home or any time you would like you can bring it up. You don't even have to have a hidden camera here. We are very transparent.

That having been said, I have a question first to Dr. Yoest. Have you seen any pro-life organizations who have created similarly manipulated videos showing this Government making cuts in prenatal care funding? Yes or no? Have you seen any videos like that?

Dr. YOEST. I am sorry. Could you repeat the question?

Mr. CÁRDENAS. Have you seen any videos, manipulated or not, that show this Government making cuts to prenatal care?

Dr. YOEST. Not that I am aware of.

Mr. CÁRDENAS. OK. Thank you.

Same question to you, Mr. Mattox, are you familiar with any videos like that showing those actions?

Mr. MATTOX. I am aware of something very similar where there was an organization, NARAL, who did investigations of pregnancy resource centers.

Mr. CÁRDENAS. Yes or no, please.

Mr. MATTOX. So, I mean, NARAL did those investigations secretly, and you had a report that was actually submitted, the Waxman report, which is a well-known report, that was based on that sort of surreptitious evidence.

Mr. CÁRDENAS. OK. Mr. Mattox, have you seen any pro-life organizations who have created similarly manipulated videos showing the Government making cuts to medical care for infants in this Nation?

Mr. MATTOX. Other than NARAL's efforts, I don't know of another example like that.

Mr. CÁRDENAS. OK.

And, Dr. Yoest, have you seen any pro-life organizations who have created similarly manipulated videos showing this Government making cuts in early childhood education?

Dr. YOEST. I can't say that I recall that.

Mr. CÁRDENAS. OK. Thank you.

Finally, Mr. Mattox, have you seen any pro-life organizations who have created similarly manipulated videos showing the Government making cuts in funding for food and medicine that otherwise would go to starving sick children and mothers in this Nation?

Mr. MATTOX. I would first have to object to the term "manipulated," because these videos, the full versions of the videos have been released.

Mr. CÁRDENAS. You didn't show full versions here as you made your presentation, so that is what I am going on, sir, what you presented today—excuse me—what Dr. Yoest presented today before both of your testimonies.

Mrs. BLACKBURN. Mr. Chairman, I think that we need to clarify. He did not present those videos. Mr. Mattox did not present those videos.

Mr. CÁRDENAS. I just clarified that he did not.

Mr. GREEN. Mr. Chairman, whose time is being used on this? Shouldn't it be a parliamentary inquiry instead of taking Mr. Cárdenas' time?

Mr. PITTS. Yes, it should be.

Do we have a point of parliamentary inquiry? If not, Mr. Cárdenas, you are recognized.

Mr. CÁRDENAS. You reserving my time or—OK.

So the videos that were shown today in this committee were not the full-length videos, suffice it to say. So I will go on.

Ms. Waxman, you heard all of these questions. Have you heard any pro-life organizations making videos that create similar outcries and false narratives in this area?

Ms. WAXMAN. No.

Mr. CÁRDENAS. Thank you.

You know, I have asked you these questions because I have not seen a pro-life organization come out and attack my friends on the right who have devastated every service that provides for the health of babies once they are born. In fact, I have heard so much about personhood lately and about life beginning at conception that it caused me to realize something, and that is that people who say life begins at conception seem to believe it ends at birth when we look at all the cuts to what I just mentioned.

The people who say they are pro-life who will go to the ends of the Earth to defend a fetus have consistently, over decades and decades, made budget cuts with anti-science rhetoric and outright disregard for the lives of children whose hungry and sick cries echo throughout our Nation and have cut to the bone funding to keep them healthy and alive.

We have one of the highest infant mortality rates in the industrialized world. More American babies die in infancy in this country than in Canada, in Croatia, and even in Cuba. I can't help but think maybe because there is no political gain to be had in caring for our kids, but there is plenty of money to be made in riling up people with anger and misinformation.

The vast majority of what Planned Parenthood does is to keep mothers, children, and families healthy, and now there is an attack to even cut that.

I have a question for you, Ms. Waxman. Have you noticed that my Republican colleagues have failed to admit the truth about the contributions of Planned Parenthood overall?

Ms. WAXMAN. I would say yes.

Mr. CÁRDENAS. OK. Thank you for answering the question.

Basically too many people in this room are dodging the real issue, and if I wanted to see people dodge, I would go someplace else. I would never think that I would have to be in the committee of Congress to see that happen.

Thank you. I yield back my time.

Dr. YOEST. May I respond very briefly?

Mr. CÁRDENAS. I yield back my time.

Mr. PITTS. The gentleman yields back.

The Chair recognizes Mr. Griffith, 5 minutes for questions.

Mr. GRIFFITH. Dr. Yoest, you wanted to respond briefly. Please do so.

Dr. YOEST. Thank you, sir.

I would just like to briefly object to the characterization of the pro-life movement, and I would like to invite you, sir, to visit a pregnancy care center in California that takes care of babies after they are born.

Mr. GRIFFITH. Thank you very much. And, Dr. Yoest, I am going to read you some testimony from the past.

"Dr. Haskell went in with forceps and grabbed the baby's legs and pulled him down into the birth canal. Then he delivered the baby's body and the arms, everything but the head. The doctor kept the head right inside the uterus. The baby's little fingers were clasping and unclasping, and his little feet were kicking.

"Then the doctor struck the scissors into the back of his head, and the baby's arms jerked out like the startled reaction, like a flinch, like a baby does when he thinks he is going to fall. The doctor opened up the scissors and stuck a high-powered suction tube into the opening and sucked the baby's brains out.

"Now the baby went completely limp. He cut the umbilical cord and delivered the placenta. He threw the baby into a pan, along with the placenta and the instruments he had just used."

Do you recall that testimony being in a prior case? And if you don't, that is OK. Yes or no?

Dr. YOEST. Roughly speaking, yes.

Mr. GRIFFITH. Yes, ma'am. And at the time—that was partial-birth abortion—and at the time, Roger Evans, Planned Parenthood's senior director for public policy litigation, says, "There is no substance to the opponents' arguments. That is ideological poppycock, totally unsupported by the medicine." Evans says, "The judges who have heard the testimony on the subject have consistently concluded it is a safer method of abortion for many women and it is a medically necessary method of abortion for women in some circumstances." That is a quote from CQ Researcher back in 2006.

And the quote I gave you earlier actually came from the Gonzales v. Carhart case in the majority opinion where they were talking about partial-birth abortion and how bad it was.

Now, earlier we heard testimony from Ms. Waxman that, you know, if somebody was found guilty of violating partial-birth abortion that, you know, they would be convicted and that would be a different story.

You made the point earlier that you were not making a legalistic case, you were making a moralistic case in answering questions from Mr. Kennedy, and I think that is instructive. Because just like the O.J. Simpson case, you may not have the evidence to put somebody in jail because that is a beyond-a-reasonable-doubt standard, but you might have the evidence to take their money away from them, which is exactly what happened in the O.J. Simpson case.

And isn't that what these bills are about, is to say that if you do something wrong, even if we don't have proof beyond a reasonable doubt, you should lose some of the money that you might get otherwise? Isn't that what these bills are really about, Dr. Yoest?

Dr. YOEST. Yes, sir. I am very glad that you read from Gonzales v. Carhart because the ban on partial-birth abortion was a very hotly contested issue in our country, and the Supreme Court was very clear in upholding its legality.

And I didn't have a whole lot of time to elaborate on Dr. Deborah Nucatola's scoffing at the partial-birth abortion law, but after she made the quote about the fact that she thought this was basically just kind of a guideline for her behavior, she went on to say that

she felt that intent came into play in that if she didn't intend to perform a partial-birth abortion, that it didn't count.

But in actual fact, to switch back to talking about the law, aside from common decency, the law is very clear that intent doesn't let you off the hook from performing a partial-birth abortion.

Mr. GRIFFITH. And there should be punishments, not only the criminal punishments but punishments to those providers who allow people to do these things by taking away their monetary sources.

I mean, if somebody determines that they are charging excessively or something else, they have the right to take away their reimbursement. Shouldn't that be the same case if there is good reason to believe that they, in fact, have violated the law whether with a baby that is born alive or by doing a partial-birth abortion in order to get more organs to harvest from our babies?

And I don't know this, so I want to track this down. I tried looking it up and I couldn't find it. Ms. Waxman, were you in favor of partial-birth abortion? Did you argue against either publicly or as a part of your law class against partial-birth or for partial-birth?

Ms. WAXMAN. I was not part of that debate.

Mr. GRIFFITH. You were not part of that debate at all. OK. I appreciate that. Thank you. I wanted to have that out there.

These are very serious issues, and it is not a matter of determining guilt beyond a reasonable doubt. It is trying to decide whether or not somebody is doing it the way the law intends it to be done or not to be done and whether or not taxpayer dollars should be used to reimburse those people for doing those acts.

And I appreciate both you, Mr. Mattox, and you, Dr. Yoest, for being here, and also you, Ms. Waxman, because in this country we always have the opposing side, and that is the way it ought to be.

Thank you very much, and I yield back.

Mr. PITTS. The Chair thanks the gentleman.

Now recognize the gentleman from Florida, Mr. Bilirakis, 5 minutes for questions.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate you holding this hearing. Very important hearing.

Mr. Mattox, in your testimony you mentioned that Planned Parenthood has had great financial success in Medicaid. Unlike other Medicaid providers, they have been able to avoid some of the oversight and corrective actions that most Medicaid providers would expect. Can you elaborate on what they have been doing, and maybe what they have been getting away with all these years?

Mr. MATTOX. Sure. First of all, Planned Parenthood has received over the last 10 years about $4 billion in taxpayer funds. And the HHS OIG does investigations every so often of family planning programs. Usually those are not as to a specific provider, but in a few instances they are.

And what they have found in just 45 recent public audits, and these are all publicly released, we have a report that was just out this morning that details all of the publicly released audits, and what that shows is that Planned Parenthood specifically has been pointed to as having overbilled the Government by $8.5 million in those publicly released audits from HHS OIG and some from State sources.

In addition to that, you have another $4.3 million that Planned Parenthood Gulf Coast paid to the Justice Department when the Obama administration Justice Department said that they thought that Planned Parenthood had overbilled the Federal Government in the Texas Women's Health Program and the Texas Medicaid.

So in addition to that, you have a number of False Claims Act cases that ADF and others have represented around the country representing whistleblowers from Planned Parenthood, these are individuals who have worked at Planned Parenthood for a number of years, Abby Johnson, Sue Thayer in Iowa, and others who have alleged tens of millions of dollars in Medicaid fraud, and there are several of those cases that are ongoing around the country.

So there is a substantial reason for the taxpayers to be very concerned this is an organization that is able to profit off of Medicaid. As a matter of fact, if you look at their annual reports, again, you see $127 million in excess revenue last year. We have heard testimony earlier that Medicaid is not usually a program that you can profit from, but it seems that Planned Parenthood has found a way.

Mr. BILIRAKIS. Thank you.

Next question. For you, Mr. Mattox: Federal law states that, quote, "No alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purpose of obtaining the tissue," end quote.

In the videos, the Planned Parenthood representative seemed to almost be boasting that they are flaunting the law. Does that seem to be the case to you? And do you think that this should be sufficient grounds to terminate Medicaid funding?

Mr. MATTOX. Having watched the videos, the full videos, I have seen those quotes, and that does seem to certainly violate Federal law. That was a bipartisan law on how we are going to handle this fetal tissue donation question, and Congress agreed that we are not going to have people changing the way they are doing abortions for that purpose, and it certainly seems that is the case. And as a matter of fact, Cecile Richards in her letter of August 27 stated that that was the case, that they would adjust the procedures.

So I am not sure. Setting the videos aside, we have the current statement from the CEO of Planned Parenthood saying that they would adjust the procedures in order to obtain better tissue.

Mr. BILIRAKIS. Thank you.

And Representative Griffith touched on this, but I want to elaborate a little bit.

Dr. Yoest, does the Planned Parenthood video show that they are willing to do partial-birth abortions in defiance to the law? Can you explain these types of abortion procedures, what they are?

Dr. YOEST. Yes, sir. If I could connect it to your previous question of Mr. Mattox. One of the things that is most troubling, through this whole process I think many of us have become much more familiar with abortion procedures than we would ever care to be. But the hard truth of the matter is that in order—the reason it is so relevant, this question of them changing their procedures, is that in order to get useable tissue they cannot use the most lethal and most—forgive me—most effective way of ending the baby's life by using a chemical called Digoxin that kills the baby before it is born.

So by moving away from using that procedure and altering their technique in order—because, excuse me, I failed to mention that Digoxin then makes the baby's tissues unusable for harvesting and selling it—and so that is what moves them toward doing these kinds of procedures that are much more likely to result in partial-birth abortion and live births.

And so I think that is a really important point for all of us to understand, that there is a cohesive whole here in terms of the violation of the law, the targeting of the organs that they want, of maintaining tissues that are the most financially marketable for them.

Mr. BILIRAKIS. OK. Thank you, Mr. Chairman. I yield back.

Mr. PITTS. The Chair thanks the gentleman.

Now recognize the gentleman from Missouri, Mr. Long, 5 minutes for questions.

Mr. LONG. Thank you, Mr. Chairman.

And thank you all for being here today.

Ms. Waxman, have you watched any of these videos, edited, unedited, whatever you want to call them, but the recent videos that have come out——

Ms. WAXMAN. I saw them today.

Mr. LONG [continuing]. At Planned Parenthood? I am sorry?

Ms. WAXMAN. I saw excerpts today.

Mr. LONG. Does it bother you to watch those?

Ms. WAXMAN. Let's say all medical procedures bother me. When I hear doctors talk about many different kinds of things, I am uncomfortable. So, yes, it is uncomfortable.

Mr. LONG. So it was disturbing to watch them.

Ms. WAXMAN. I would say uncomfortable.

Mr. LONG. Yes. I would say you are right, because I didn't watch them today. I have watched them before. I was watching you. You have got a video monitor 90 degrees to your right, you have got a video monitor 90 degrees to your left, and you looked up once or twice.

Ms. WAXMAN. I don't think that is true, Your Honor. I did. I watched them. And I have seen them before.

Mr. LONG. But it is disturbing to you is my point. I am not getting on you for not doing it. Some people can't watch them. They are very disturbing. So you are disagreeing with what I said?

Ms. WAXMAN. I think I answered the question. I do find them uncomfortable.

Mr. LONG. I am not trying to be argumentative at all. I don't know where you think I am going. You act like you are defensive, like I am trying to be——

Ms. WAXMAN. OK. I find them uncomfortable. I think I said that.

Mr. LONG. Yes. Sure. A lot of people do, and there is nothing wrong with that. I am not trying to trap you. I am not a lawyer. I don't play one on TV.

Ms. WAXMAN. We are on the same page.

Mr. LONG. I have got a friend that can't watch those videos either. And the reason—I know nothing about your background, but I do know his background—the reason he can't watch those videos is that when his mother became pregnant with him at a young age, her family, her friends told her to abort him, said that your life will

be a lot better, you will have a very hard life if you carry this child to term. And thankfully she didn't listen to her family and her friends and people that told her to abort the child, and today he is a United States Congressman. He is not the one sitting before you. It is not my story. But he is a United States Congressman.

He says, "I cannot watch these videos," he said, "because when I watch them, I see myself. I see myself as that baby that my mom thought about aborting," and it is extremely upsetting to him. And I think that it is extremely upsetting to a lot of people.

And like I said, I am not trying to be argumentative with you, but I noticed, I was watching you as they were playing it, and you, as you admitted, you know, they are kind of tough to watch.

Ms. WAXMAN. May I respond?

Mr. LONG. Not yet. If I have time at the end, I will be glad for you to.

When I came up to this hearing, it has been a few hours ago now, but when I came up to this hearing the elevator door opened as we were getting on the elevator down on G3 to come up here to floor 1, and a lady—I didn't even focus on her, but she was pushing a baby carriage. And she had a screaming—I guarantee you, I am not a doctor, I don't know how old the kid was, but he was less than a month old, all red, screaming. The Congressman that got on with me, as she got off pushing her baby in the baby carriage, said that is the most beautiful sound in the world.

And I graduated high school in 1973. In 1973 Roe v. Wade came down, the ruling. And the people say: Oh, the pro-lifers are doing this for everything. I didn't understand abortion when I was a senior in high school when they ruled it legal at the Supreme Court. I still don't. I don't make any apologies for that. But seeing that young baby as we come into here, it just, you know, a few months ago, would have been OK to take that life. I make no apologies, but I don't understand that. And so when we have hearings like this, it is difficult for me.

I was at a luncheon today, Speaker Pelosi was there, Gene Green was there, the ranking member, his wife was there. It was the 23rd Annual Congressional Families Cancer Prevention Luncheon. I sat next to my daughter, who is 26 years old, that had her last chemotherapy treatment on August 10 of this year. She is doing great. She has a PET scan coming up here, and we think she is fine.

But to think of what people do to save themselves and to prevent cancer and to treat cancer once they have cancer and to fight for life, the emcee was Jennifer Griffin of Fox News, national security correspondent, 46 years old, I believe, breast cancer. The other lady, I can't call her name right this second, but a cook on TV, 49 years old. But when you see the emotion that the people in the room, Democrat, Republican, rallied together for the 23rd time, 23rd luncheon, to fight for life, it just, to me, it is just a real shame that it is OK to kill a child 3 months before it is born, but you kill it 3 months after it is born and you are going to go to jail. And I just, you know, I am sorry, but I don't get that.

There was a lady that had an opportunity to abort a United States Congressman, didn't do it. I don't know how many Congressmen have been aborted over the years, how many Senators, how many Presidents, how many brain surgeons, whatever. But those

of us that people want to call us pro-life or whatever, we don't come to it because we are Republicans, we don't come to it for political reasons. Some of us just don't understand stopping a beating heart.

And with that, Mr. Chairman, I yield back.

Mr. PITTS. I thank the gentleman.

And I now recognize the gentlelady from North Carolina, Mrs. Ellmers, 5 minutes for questions.

Mrs. ELLMERS. Thank you, Mr. Chairman.

And, again, I thank the panel for being with us today.

Dr. Yoest, it is good to see you. And I want to ask you a couple of questions. And my colleague, Mr. Griffith from Virginia, was touching on some of the discussion and some of your testimony regarding Dr. Nucatola. In the quote that she had made, quote: "The Federal abortion ban is the law and the laws are up to interpretation," unquote.

Now, I think you clearly state that that is not your view, that it is not just up for interpretation, that it is very clear. Am I correct?

Dr. YOEST. The law is very clear about what it has banned.

Mrs. ELLMERS. And I did want to touch back on the comment you made about the Supreme Court and their review of the current partial-birth abortion ban and upholding it. Is that correct?

Dr. YOEST. Yes.

Mrs. ELLMERS. OK. So, you know, like my colleague Mrs. Blackburn, I have one of the bills. And, you know, just for the panel and the discussion of clarifying the situation for our States, I just want to state that I would like to say to the panel that my draft bill seeks to clarify existing State authorities over providers serving Medicaid patients so that those States who suspect a provider may have violated the partial-birth abortion ban can immediately end their State's relationship with that provider. If a provider was proven guilty under the draft law, he or she would also be mandatorily excluded from the Federal healthcare program.

I don't think that is unreasonable to allow States to provide that ability. I believe that States should have those rights.

Dr. Yoest, have you seen or read anything recently over these past few weeks that causes you to think that some providers are, indeed, violating the partial-birth abortion ban and billing Medicaid for it?

Dr. YOEST. Well, I think, you know, there has been a lot of conversation about the context and the editing of the videos. But I think that in looking at the full totality of Dr. Nucatola's testimony, I just don't see that context is helpful at all when she is quite clear that she starts the day with a list of organs that she is targeting, and then she describes a procedure that she uses in order to ensure that those organs that she is harvesting are then usable.

Mrs. ELLMERS. You know, and I would just like to say, as a nurse and dealing with these issues of, you know, taking care of patients and dealing in the world of health care, I agree. As difficult as it is to watch the videos, and as difficult as it is to hear her describe in such a matter-of-fact manner how she kind of tallies up the day and moving forward—my husband is a general surgeon, and we have many discussions about the surgeries that he

will have that day, and, you know, what his hopes are, obviously, to take good care of those patients and hopefully everything will go well.

That is what I hear her talk about, only from a perspective of, again, retrieving fetal body organs in the best possible manner that she can do that. And it is chilling to me, and it truly is sickening to hear that because of the matter-of-fact manner in which she does that.

Furthermore, Dr. Yoest, you noted in your testimony and I will quote what you had said: "Planned Parenthood has a track record of opposing partial-birth abortion bans." And I do believe that you have stated that and that in the past that this is something that they have done. And I will just further quote you: "States should be permitted to withdraw or deny Medicaid funding to individuals and entities that violate the letter and spirit of the widely supported laws against infanticide," unquote.

In addition to the bills that we are considering, that my colleague from Tennessee and I are moving forward in the committee this week, and, you know, with our chamber, what other Federal approaches would you recommend we consider to better protect the lives of our most vulnerable young Americans?

Dr. YOEST. Well, I think that in addition to—well, first, can I just say that we do appreciate both what you and Congresswoman Blackburn are doing with your bills and that we just very much appreciate that.

There is also the bill that I believe will soon be introduced by Congressman Franks to add criminal penalties to the Born-Alive Infants Protection Act. And then I believe there is also another bill to be soon introduced by Congresswoman Black to propose a moratorium on Planned Parenthood funding.

So I think that there is a lot of conversation going on right now, and I think that there are quite a few different approaches that we can take that could be a productive approach.

Mrs. ELLMERS. Thank you so much.

And, Mr. Chairman, I yield back the remainder of my time. Thank you.

Mr. PITTS. The Chair thanks the gentlelady.

Now recognizes the gentlelady from Colorado, Ms. DeGette, 5 minutes for questions.

Ms. DEGETTE. Thank you very much, Mr. Chairman. And I want to thank you for your comity in allowing me to waive onto this committee. It is a tough topic, and it is important.

The title of this hearing is "Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law." Ms. Waxman, under current law, the Federal Government right now, if somebody who violates any law is found by due process to violate that law, Federal funding can be cut off right now under current law, correct? Yes or no?

Ms. WAXMAN. Yes, if what we are talking——

Ms. DEGETTE. Thank you.

Ms. WAXMAN. Yes.

Ms. DEGETTE. So the real issue is, has Planned Parenthood violated the law, correct?

Ms. WAXMAN. That would be the issue.

Ms. DEGETTE. OK.

Now, at the beginning of this hearing we were shown some small film snippets. But I just want to ask, Dr. Yoest, you, yourself, did not make those film snippets, correct? Yes or no?

Dr. YOEST. No, ma'am.

Ms. DEGETTE. And, Mr. Mattox, you, yourself, did not make those films, correct? Yes or no?

Mr. MATTOX. I did not create them. I have watched them.

Ms. DEGETTE. You have watched them.

And, Dr. Yoest, you and your staff also watched film clips on the Internet, yes or no?

Dr. YOEST. We have watched——

Ms. DEGETTE. You have watched the films on——

Dr. YOEST [continuing]. The unedited ones.

Ms. DEGETTE. You watched what you are told are unedited films online, yes? Correct?

Dr. YOEST. Yes.

Ms. DEGETTE. But you don't know for a fact—you didn't make those films, so you don't know from personal experience that they are unedited, correct? Yes or no? I mean, you didn't make the film, so you don't know if they are edited or not?

Dr. YOEST. No, I can't. You are right, I can't.

Ms. DEGETTE. And same with you, Mr. Mattox, you didn't make the films, right?

Mr. MATTOX. I did not make the films.

Ms. DEGETTE. So, Mr. Chairman, we have been told, the minority has been told on Oversight and Investigations and this committee that we have been provided with all of the unedited films online, but we haven't had the person from the Center for Medical Progress who made those videos here. He is not here today. We haven't had him in the committee. On the Oversight Subcommittee, we take testimony under oath. And what I would like to see—and I see my chairman is here, Mr. Murphy—what I would like to see is, I would like to see him come in to the committee under oath and talk to us about how he made those videotapes.

But let's accept the assertions from our witnesses that the unedited videotapes are online, let's accept that. So today, Mr. Chairman, what we did, this hearing started out with several film clips. The first film clip was of a baby who apparently was not an aborted fetus. It was a baby named Walter Fretz, who had been born prematurely at 19 weeks. And along with a picture of that baby, there was a woman talking. She apparently was a woman who used to work for an organization that was a procurement technician talking about late-term abortion procedures, which was totally unrelated to the baby, Walter Fretz, who was shown.

And to make this even more horrifying to me as a mother, apparently, Walter Fretz's mother did not agree that her baby, her precious baby, could be used in this way.

So that was the first video clip that we were shown today to give us the impression that Planned Parenthood was somehow harvesting organs from this little baby. I can hardly get over that. The second and third and fourth clips were very small clips from what are many, many, many hours of videotapes that were apparently taken.

So the Oversight and Investigations Democrats reviewed all of the videotapes that we were given, which the majority tells us are all of the videotapes. There was no illegal activity found. There was no illegal activity found in what we saw.

When we pointed that out today, you know what the majority says to us? They say, "Well, that is because the O&I investigation is not completed." Well, I would ask you, Mr. Chairman, and I would ask you, Chairman Murphy, if there is more information that we haven't been given in order to have this legislative hearing today, I would suggest that the majority should produce it to us. Because otherwise all we are going on is allegation and innuendo.

And the lives of millions of American women are being put at stake at this: 4.2 million visits to Planned Parenthood centers last year, not for abortions, for mammogram, for cervical cancer screening, for well-women screening, 4.2 million visits last year are in jeopardy because of innuendos and allegations and videotapes that, for the purposes of the hearing today, were highly edited, misconstrued, and doctored. And that is why we are so mad.

And, again, I thank you for letting me talk. I thank you for doing this. But I think we should take this very, very seriously.

Mr. PITTS. The Chair thanks the gentlelady.

Dr. Murphy, you can respond briefly.

Mr. MURPHY. Mr. Chairman, I just want to say that we will continue to investigate this thoughtfully as you and I do with the Oversight and Investigations Committee, continue to invite you to be thoroughly involved, will continue to share all information together, each side will do that.

There is a lot to review here. I will restate, as I said before, it is premature for any of us to draw conclusions. There is a lot to review and investigate this. As you know, we do with all of our hearings gather information and we follow the facts where they take us, and we will continue to be thoughtful in our approach.

Ms. DEGETTE. I certainly will look forward to that hearing.

Mr. PITTS. The Chair thanks the gentleman.

Now recognize the gentleman, Dr. Bucshon, 5 minutes for questions.

Mr. BUCSHON. Thank you, Mr. Chairman.

I just want to say, I am a physician who has operated on premature babies as young as 23 weeks gestation. In fact, the smallest baby I operated on in my practice weighed only 650 grams. I did a specific operation call a patent ductus ligation of premature babies. And so I find the discussion, the callousness of the discussion, particularly appalling in the videos based on that, as well as the fact that I am a father of four and a pro-life person.

But also as a physician, I take access to health care very seriously, and it is very important to me. And that is why I think it is such a ridiculous argument that the minority makes that Republicans in some way want to limit access to health care for women. That is a debunked argument. It has failed politically and it has failed factually many, many times. But they continue to make it because that is the only thing they have.

So with that, I want to also outline some statistics on Planned Parenthood about access to health care. And this is their own data. They treat just 2 percent of the Nation's women for any reason, 2

percent. Ninety-eight percent of women get their health care other places other than Planned Parenthood.

They also don't offer women some basic primary care. Mammograms were just mentioned. But, Ms. Waxman, does Planned Parenthood perform mammograms?

Ms. WAXMAN. You know, my own doctor doesn't——

Mr. BUCSHON. That is a yes-or-no answer. Does Planned Parenthood——

Ms. WAXMAN. It is no, as most primary care don't.

Mr. BUCSHON. So Ms. DeGette's statement was false, they don't perform mammograms, OK?

Ms. WAXMAN. They do breast exams, however.

Mr. BUCSHON. Well, any physician can do that. In fact, you know it is the law that if a woman comes into your office and they haven't had a breast exam within a year, even a cardiovascular surgeon must perform a complete breast exam? Do you know that that is true?

Ms. WAXMAN. I don't, but that is great.

Mr. BUCSHON. That is the fact.

Ms. WAXMAN. That is great.

Mr. BUCSHON. Yes. Do they provide cardiovascular blood tests for women?

Ms. WAXMAN. I don't know.

Mr. BUCSHON. They don't, I will tell you.

Do they offer bone mass measurements for women, which is very important, as you know, because women are at risk for osteoporosis? Do they do that?

Ms. WAXMAN. I don't know.

Mr. BUCSHON. The answer is no, they don't.

And I think you do know this one: Their cancer screenings have decreased by half over the past 10 years.

Ms. WAXMAN. I don't know that, either.

Mr. BUCSHON. The answer is yes, it has.

So the argument here, and I am speaking from a physician's standpoint, this is purely about pro-choice people trying to protect the organization that performs, what, 40 percent of the abortions in the United States. This is not about women's health care. Republicans want all women to have access to quality, affordable health care regardless of their ZIP code, regardless of what socioeconomic status they are. That is just a false argument.

And to stand here and try to say that if we don't redirect money to health centers that can be funded by the Federal Government and that Planned Parenthood loses their funding that all of a sudden women aren't going to have access to health care is just a false argument. I mean, it is just not true.

The other thing is, you know, I looked up the laws in Indiana about if you did this to a pet, you know, if you did some of the things described in these videos to, you know, an animal that was born alive and you destroyed them and took their body parts, in Indiana you would go to prison for 180 days and $1,000 fine. That is for a pet. And so to argue that we shouldn't have—that this should be something we should just callously talk about, about a human being, is ridiculous.

So I just think that we need to seriously look at our country and whether or not, as a people, we are willing to accept this activity, and quit trying to protect people that are doing things that really are morally and potentially legally not correct.

I would yield my last 30 seconds to anyone that wants to make any final comments.

Mr. BUCSHON. I yield to Mrs. Blackburn.

Mr. PITTS. The Chair recognizes Mrs. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman. And I appreciate that we have spent the time on this issue.

As Ms. DeGette was questioning Dr. Murphy about where we continue, I think it is important to note, we are at the beginning of an investigation and we are just starting this process. We do know from Planned Parenthood's own statistics that they perform over 300,000 abortions a year. Compare that to the 1,800 adoption referrals that they make and the 18,000 prenatal health visits they give for women.

So, you know, as all of this has tried to be made a discussion about the videos, I think it is imperative that we refocus this, Mr. Chairman. We are here to make certain that women and children are protected and that unborn children, children that are yet unborn, have the right to life. That is the point of this discussion.

And I yield back to the gentleman.

Mr. PITTS. The Chair thanks the gentlelady.

Mr. BUCSHON. I yield back.

Mr. PITTS. That concludes the questions of the members.

We will have some follow-up questions that we will send to you in writing. We ask that you please respond promptly.

I remind members that they have 10 business days to submit questions for the record, and so they should submit their questions by the close of business on Thursday, October 1.

I want to thank the members, the witnesses, everyone, for staying late and long. You have been very patient, but this is a very important issue.

We have a UC request?

Mr. GREEN. Yes.

Mr. PITTS. Go ahead.

Mr. GREEN. OK. Mr. Chairman, I would like to ask unanimous consent to place into the record a Texas Policy Evaluation Project research paper, since Texas' coverage has been an issue. Also, an article from healthaffairs.org, "How Texas Lawmakers Continue to Undermine Health Care." And also from the Health Affairs organization, "Planned Parenthood, Community Centers, Getting the Facts Straight."

Mr. PITTS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. PITTS. And without objection, the subcommittee is adjourned.

Mr. BURGESS. Mr. Chairman, I have a unanimous consent request.

Mr. PITTS. Go ahead.

Mr. BURGESS. So the Texas Women's Health Program Provider Survey: Patient Capacity Report, January 7, 2013, from the State of Texas; National Review, "What Texas PolitiFact Won't Admit About the State's Defunding of Planned Parenthood"; and the Daily

Signal, "If Planned Parenthood Loses Government Funding, Here's a Map of Healthcare Clinics That Could Take its Place."

Mr. PITTS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. PITTS. With that, the subcommittee is adjourned.

[Whereupon, at 6:52 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. ELIOT L. ENGEL

Thank you, Mr. Chairman.

I think it is important that we recognize why today's hearing is taking place. Despite its incendiary title, the goal of this hearing is not to "protect" anyone. If it were, we would not be debating the merits of an organization that provides life-saving care to more than 2 million Americans, most of whom have nowhere else to turn.

We are here because the Majority has again chosen to spend precious legislative days reigniting the same tired battles of years past, and bringing our Government to the brink of a shutdown, all for the purpose of rolling back women's ability to control their own health and bodies.

This time, their attacks are focused on Planned Parenthood—an organization that, despite contrived and unsubstantiated allegations to the contrary, has not violated any State or Federal laws, but has provided breast exams, cervical cancer screenings, HIV tests, and other invaluable services to our country's poorest and most underserved women and men.

Some have argued that other providers, such as community health centers, could fill the void that would be created if Planned Parenthood clinics closed their doors and offer these patients the same level of care.

More than half of Planned Parenthood health centers are located in rural areas, medically underserved areas, or health professional shortage areas. My district contains such "shortage areas," where access to health care is already too limited.

It is not difficult to understand, then, why the American Public Health Association called the notion that community health centers could simply take on all of the patients who rely on Planned Parenthood "ludicrous."

It is also not difficult to imagine how unlikely it will be that women and men in these underserved areas would be able to access life-saving breast cancer screenings, cervical cancer screenings, STI tests and HIV tests in a timely manner if Planned Parenthood centers were to disappear.

Make no mistake: the bills under consideration today will do nothing to "protect" our constituents. On the contrary, they will put the health of our country's most vulnerable women and men in jeopardy.

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To amend title XIX of the Social Security Act to provide greater clarity for States with respect to excluding providers whose actions a State suspects causes termination of infants born alive, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. BLACKBURN introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title XIX of the Social Security Act to provide greater clarity for States with respect to excluding providers whose actions a State suspects causes termination of infants born alive, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting Infants Born Alive Act".

1 **SEC. 2. CLARIFYING STATES' ABILITY TO EXCLUDE PRO-**
2 **VIDERS WHOSE ACTIONS STATES SUSPECT**
3 **CAUSES TERMINATION OF INFANTS BORN**
4 **ALIVE.**

5 Section 1902(a)(23) of the Social Security Act (42
6 U.S.C. 1396a(a)(23)) is amended by inserting before the
7 semicolon at the end the following: ", or as requiring a
8 State to provide medical assistance for such services fur-
9 nished by a person or entity who has employed a person
10 whose services or actions are suspected by the State of
11 causing the termination of a human infant who would be
12 classified as an infant that is born alive under section 8
13 of title 1, United States Code".

14 **SEC. 3. PROTECTING PATIENTS BY NOT PROVIDING FED-**
15 **ERAL FUNDING TO PROVIDERS WHO TERMI-**
16 **NATE INFANTS BORN ALIVE.**

17 Section 1903(i) of the Social Security Act (42 U.S.C.
18 1396b(i)) is amended by inserting after paragraph (11)
19 the following new paragraph:

20 "(12) with respect to amounts expended for
21 medical assistance for items and services furnished
22 by a person or entity who has employed a person
23 who has terminated a human infant who would be
24 classified as an infant that is born alive under sec-
25 tion 8 of title 1, United States Code;".

1 **SEC. 4. TERMINATION FROM PARTICIPATION IN FEDERAL**
2 **HEALTH CARE PROGRAMS OF PROVIDERS**
3 **WHO TERMINATE INFANTS BORN ALIVE.**

4 Section 1128(a) of the Social Security Act (42 U.S.C.
5 1320a–7(a)) is amended by adding at the end the fol-
6 lowing new paragraph:

7 "(5) TERMINATION OF BORN ALIVE INFANT.—
8 Any individual or entity who has employed a person
9 who has terminated a human infant who would be
10 classified as an infant that is born alive under sec-
11 tion 8 of title 1, United States Code.".

12 **SEC. 5. EFFECTIVE DATE.**

13 The amendments made by this Act shall apply with
14 respect to terminations occurring on or after the date of
15 the enactment of this Act.

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To amend title XIX of the Social Security Act to provide greater clarity for States with respect to excluding providers whose actions a State suspects violate Federal law by performing partial-birth abortions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. ELLMERS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title XIX of the Social Security Act to provide greater clarity for States with respect to excluding providers whose actions a State suspects violate Federal law by performing partial-birth abortions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Protect Infants from
5 Partial-birth Abortion Act".

SEC. 2. CLARIFYING STATES' ABILITY TO EXCLUDE PROVIDERS WHOSE ACTIONS STATES SUSPECT VIOLATE FEDERAL LAW BY PERFORMING PARTIAL-BIRTH ABORTIONS.

Section 1902(a)(23) of the Social Security Act (42 U.S.C. 1396a(a)(23)) is amended by inserting before the semicolon at the end the following: ", or as requiring a State to provide medical assistance for such services furnished by a person or entity who employs a person who a State suspects has performed, or who has been convicted under Federal law of performing, partial-birth abortions in violation of section 1531 of title 18, United States Code".

SEC. 3. PROTECTING PATIENTS BY NOT PROVIDING FEDERAL FUNDING TO PROVIDERS CONVICTED OF VIOLATING FEDERAL LAW BY PERFORMING PARTIAL-BIRTH ABORTIONS.

Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended by inserting after paragraph (11) the following new paragraph:

"(12) with respect to amounts expended for medical assistance for items and services furnished by a person or entity who employs a person who has been convicted for a criminal offense consisting of performing partial-birth abortions in violation of section 1531 of title 18, United States Code;".

1 **SEC. 4. TERMINATION FROM PARTICIPATION IN FEDERAL**
2 **HEALTH CARE PROGRAMS OF PROVIDERS**
3 **CONVICTED OF VIOLATING FEDERAL LAW BY**
4 **PERFORMING PARTIAL-BIRTH ABORTIONS.**

5 Section 1128(a) of the Social Security Act (42 U.S.C.
6 1320a–7(a)) is amended by adding at the end the fol-
7 lowing new paragraph:

8 "(5) TERMINATION OF PROVIDERS FOUND TO
9 BE IN VIOLATION OF FEDERAL LAW BY PERFORMING
10 PARTIAL-BIRTH ABORTIONS.—Any individual or enti-
11 ty who employs a person who has been convicted for
12 a criminal offense consisting of performing partial-
13 birth abortions in violation of section 1531 of title
14 18, United States Code.".

15 **SEC. 5. EFFECTIVE DATE.**

16 The amendments made by this Act shall apply with
17 respect to offenses committed on or after the date of the
18 enactment of this Act.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

September 9, 2015

To: **Subcommittee on Oversight and Investigations Democratic Members and Staff**

Fr: **Committee on Energy and Commerce Democratic Staff**

Re: **Update on the Committee's Ongoing Investigation of Planned Parenthood Federation of America**

I. INTRODUCTION

This memorandum serves as an update on the Committee's ongoing investigation into claims regarding the alleged sale of fetal tissue by affiliates of Planned Parenthood Federation of America (PPFA) to tissue procurement organizations (TPOs). The review has included bipartisan briefings by Planned Parenthood officials as well as representatives from StemExpress, Novogenix Laboratories, and Advanced Bioscience Resources - three TPOs that partner with Planned Parenthood affiliates and other healthcare providers to collect specimens to supply to researchers working with fetal tissue.

In addition to these briefings, the Committee has received documents and written responses to a series of questions it posed in writing to PPFA regarding its "practices relating to fetal tissue collection and sale or donation."[1] To date, the Committee has received no evidence to substantiate the allegations that Planned Parenthood has engaged in the sale of fetal tissue for profit. Furthermore, the Committee has received no evidence to support the allegations that fetal tissue was procured without consent, that Planned Parenthood physicians altered the timing, method, or procedure of an abortion solely for the purposes of obtaining fetal tissue, or that Planned Parenthood physicians performed intact dilation and evacuation in order to preserve fetal tissue for research. Thus far, the investigation has revealed that PPFA requires all affiliates to ensure compliance with all state and federal laws and that specific PPFA guidance requires affiliates to ensure that reimbursement for fetal tissue is limited to actual costs.

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[1] Letter from Chairman Fred Upton, House Committee on Energy and Commerce, to Cecile Richards, President, Planned Parenthood Federation of America (July 17, 2015).

The Committee received evidence that the individuals making these unsubstantiated claims misrepresented themselves in order to gain access to Planned Parenthood personnel and facilities, and that the videos released by the Center for Medical Progress (CMP) are incomplete, selectively edited, and intentionally misleading.

II. THERE IS NO EVIDENCE THAT PLANNED PARENTHOOD OR ITS AFFILIATES HAVE VIOLATED ANY FEDERAL OR STATE LAWS

A. PPFA Requires All Affiliates to Comply With All State and Federal Laws, Including Laws Pertaining to the Donation of Fetal Tissue for Research

i. PPFA Guidance to Affiliates Regarding Human Fetal Tissue Donation Specifically Advises That It Is Illegal to Receive "Valuable Consideration" for Fetal Tissue, and Requires Affiliates to Ensure that Reimbursement Represents Actual Costs

The NIH Revitalization Act of 1993 established the legal standards governing fetal tissue donation.[2] The law states, "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce."[3] The law further provides: "The term 'valuable consideration' does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue."[4]

Current PPFA guidance on fetal tissue donation tracks federal law, and it clearly and explicitly prohibits affiliates from receiving valuable consideration for fetal tissue. The guidance also requires affiliates to ensure that reimbursement represents actual costs incurred by the affiliate. The current PPFA guidance, revised in May 2015, provides as follows:

> Federal law prohibits the payment or receipt of money or any other form of valuable consideration for fetal tissue, regardless of whether the program to which the tissue is being provided is federally funded or not.
>
> There are limited exceptions that allow reimbursement for actual expenses (e.g. storage, processing, transportation, etc.) of the tissue. If an affiliate chooses to accept reimbursement for allowable expenses, it **must** be able to demonstrate the reimbursement represents its actual costs. PPFA recommends that an affiliate consult with CAPS [Consortium of Abortion Providers] about steps to take to document and demonstrate actual cost. [emphasis in the original][5]

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[2] National Institutes of Health Revitalization Act of 1993, P.L. No. 103-43.

[3] 42 U.S.C. § 289g–2(a).

[4] 42 U.S.C. § 289g-2(d)(3).

[5] Planned Parenthood Federation of America, Programs for Donation of Blood And/Or Aborted Pregnancy Tissue for Medical Research (May 2015).

The guidance also advises affiliates that "there are federal, and frequently, state laws that govern these activities, as well as ethical considerations. Great care must be taken to assure that these programs are above reproach in all respects."[6]

In a briefing with Committee staff, Dr. Raegan McDonald-Mosley, the Chief Medical Officer of PPFA, explained that PPFA accredits its affiliates. Affiliates are autonomous legal entities, with their own separate boards, executive personnel, and legal counsel.[7]

Dr. McDonald-Mosley further described how PPFA oversees its affiliates and verifies their compliance with its fetal tissue donation guidance. Each affiliate is independently responsible for ensuring compliance with the guidance, as well as with all applicable state and federal laws.

PPFA oversees its affiliates through an accreditation process, whereby each affiliate is reviewed at least once every three years. Affiliates are evaluated on a range of hundreds of possible elements of performance, including, as of 2013, compliance with PPFA's fetal tissue donation guidance. Accreditation involves both offsite reviews of affiliate documentation as well as onsite reviews that include interviews with staff and direct observation of patient care.[8] Non-compliance with PPFA required standards may affect an affiliate's accreditation status and result in actions that jeopardize that affiliate's ability to continue to use the Planned Parenthood trademark.[9]

Although the precise language of PPFA's fetal tissue guidance has been revised over the years, affiliates have always been required to ensure that their tissue donation programs are in compliance with all state and federal laws, including the prohibition on receiving valuable consideration. For example, an earlier version of the guidance from 2001 provided to the Committee instructs affiliates that federal laws "forbid the payment or receipt of valuable consideration for fetal tissue. However, they permit 'reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage' of fetal tissue."[10] This guidance was reissued to affiliates in 2011.[11]

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[6] *Id.*

[7] Briefing by Dr. Raegan McDonald-Mosley, Chief Medical Officer, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 14, 2015).

[8] *Id.*

[9] Planned Parenthood Federation of America, U.S. House of Representatives Committee on Energy & Commerce, Subcommittee on Oversight & Investigations, Follow-Up Questions Dated August 20, 2015.

[10] Planned Parenthood Federation of America, Memorandum to Affiliate Chief Executives, Affiliate Medical Directors, Patient Services Directors Re: Federal Regulations for Aborted Pregnancy Tissue Donation Programs (Apr. 4, 2001).

[11] Planned Parenthood Federation of America, Memorandum to Affiliate CEOs, Medical Directors, Patient Services Directors Re: Aborted Pregnancy Tissue Donation Programs (Jan. 26, 2011).

Several years ago, PPFA undertook an effort to revise their Manual of Medical Standards and Guidelines (the Manual) by removing those sections not directly related to clinical care.[12] According to Dr. McDonald-Mosley, the Manual is a desk reference for clinicians for directing medical care.[13] It is intended to assist practitioners in providing regular care for a patient and is revised on a two-year cycle. As a result of this revision effort, the fetal tissue guidance was separated from the Manual and is now a standalone document.[14] It is distributed to affiliates through the PPFA intranet. Dr. Deborah Nucatola, who is PPFA's Senior Director for Medical Services and has had primary responsibility for the Manual since July 2009, explained to Committee staff that guidance on fetal tissue donation was removed from the Manual as part of this process to streamline and remove non-clinical information.[15]

As of November 6, 2013, affiliates are now permitted to facilitate fetal tissue donation without prior approval from PPFA.[16] PPFA distinguishes between "core services," which all affiliates are required to provide, such as well-women visits and education and prescribing for all FDA-approved methods of contraception, and services which are voluntary or optional for affiliates to offer.[17] Earlier versions of the fetal tissue guidance instructed affiliates to "submit a written request to initiate an aborted tissue and/or blood donation program to PPFA for review and approval."[18] According to PPFA, it "implemented this policy change as part of a broader effort to reduce the administrative burden on affiliates and support affiliate service expansion.

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[12] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015).

[13] Briefing by Dr. Raegan McDonald-Mosley, Chief Medical Officer, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 14, 2015).

[14] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015).

[15] *Id.*

[16] Planned Parenthood Federation of America, U.S. House of Representatives Committee on Energy & Commerce, Subcommittee on Oversight & Investigations Follow-Up Questions Dated August 20, 2015.

[17] Briefing by Dr. Raegan McDonald-Mosley, Chief Medical Officer, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 14, 2015).

[18] Planned Parenthood Federation of America, Manual of Medical Standards and Guidelines: Programs for Donation of Blood And/Or Aborted Pregnancy Tissue for Medical Research, Education, or Treatment (June 2011).

This overhaul affected other services besides facilitation of tissue donation; PPFA no longer requires prior approval for an affiliate to offer certain other non-core services."[19]

ii. PPFA Guidance to Affiliates Includes Additional Requirements Pertaining to Fetal Tissue Transplantation Research, Although This is Not Required by Law

Federal law imposes additional requirements on providers and on researchers when the donated tissue is used in federally funded research involving the transplantation of human fetal tissue for therapeutic purposes.[20] Under the statute, human fetal tissue may be used in federally funded research on the transplantation of fetal tissue if the attending physician declares in writing 1) that the woman's consent for abortion was obtained prior to requesting or obtaining consent to donate the fetal tissue for research; 2) that the timing, method, or procedure used to terminate the pregnancy were not altered in order to obtain the tissue; 3) that the abortion was performed in accordance with applicable state law; and 4) the woman has been fully informed of the physician's interest, if any, in the research, and of any medical or privacy risks associated with the tissue donation.[21]

According to the National Institutes of Health (NIH), the federal government has not funded any fetal tissue transplantation research since 2007.[22] The federal rules relating to the timing and method of abortion are therefore not applicable to any recent fetal tissue donations in the United States. However, PPFA's fetal tissue donation guidance nonetheless incorporates these requirements as recommended practices for affiliates. The 2015 PPFA guidance provides:

> Federal law establishes additional requirements applicable whenever the research involving fetal tissue is conducted or supported by the federal government. PPFA recommends that these requirements be adhered to without regard to whether the tissue donation program is federally supported or not. These requirements are:
>
> 1. That the client's consent to donate not be sought until after she has decided to have an abortion and has signed the consent form for the abortion.

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[19] Planned Parenthood Federation of America, U.S. House of Representatives Committee on Energy & Commerce, Subcommittee on Oversight & Investigations Follow-Up Questions Dated August 20, 2015.

[20] Congressional Research Service, *Fetal Tissue Research: Frequently Asked Questions* (July 21, 2015).

[21] 42 U.S.C. § 289g-1(b)(2). The statute also requires that the patient sign a statement that 1) the donation is made without any restriction regarding the identity of individuals who may be recipients of transplantations of the tissue; and 2) the woman has not been informed of the identity of any such individuals. 42 U.S.C. § 289g-1(b)(1). The statute imposes additional requirements on researchers, which are not discussed here. 42 U.S.C. § 289g-1(c).

[22] Letter from Jim R. Esquea, Assistant Secretary for Legislation, Department of Health & Human Services, to The Honorable Fred Upton, Chairman, House Committee on Energy and Commerce (July 14, 2015) ("Fiscal year 2007 was the most recent year NIH provided funding for this purpose.").

> 2. That the client acknowledge that the blood or tissue is being donated as a gift and that she will not be paid.
>
> 3. That the client acknowledge that she has not been told and that she has no control over who will get the donated blood and/or tissue or what it will be used for.
>
> 4. That there will be no changes to how or when the abortion is done in order to obtain the blood or tissue.[23]

The guidance further instructs affiliates that "It must be documented that no substantive alteration in the timing of terminating the pregnancy or of the method used was made for the purpose of obtaining the blood and/or tissue."[24]

Similarly, earlier versions of the PPFA guidance required the clinician to make a notation that: "[a]borted tissue was donated," "[c]onsent for the abortion was obtained prior to requesting or obtaining consent for the tissue donation," and "[n]o substantive alteration in the timing of terminating the pregnancy or of the method used was made for the purpose of obtaining the tissue."[25] Previous versions of the guidance also required specific language in consent forms used for tissue donation. These versions were issued under the previous system, in which affiliates were required to seek service approval from PPFA for tissue donation programs.[26]

Appended to PPFA's May 2015 guidance is a recommended sample consent form, which prompts the patient who is donating tissue to affirm the following statements:

> Before I was shown this consent, I had already decided to have an abortion and signed a consent form for it.
>
> I agree to give my blood and/or the tissue from the abortion as a gift to be used for education, research, or treatment.
>
> I understand I have no control over who will get the donated blood and/or tissue or what it will be used for.

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[23] Planned Parenthood Federation of America, Programs for Donation of Blood And/Or Aborted Pregnancy Tissue for Medical Research (May 2015).

[24] *Id.*

[25] *See, e.g.*, Planned Parenthood Federation of America, Manual of Medical Standards and Guidelines: Programs for Donation of Blood And/Or Aborted Pregnancy Tissue for Medical Research, Education, or Treatment (May 2005).

[26] Planned Parenthood Federation of America, Manual of Medical Standards and Guidelines: Programs for Donation of Blood And/Or Aborted Pregnancy Tissue for Medical Research, Education, or Treatment (June 2011); Planned Parenthood Federation of America, Manual of Medical Standards and Guidelines: Aborted Pregnancy Tissue Donation Programs (March 2001).

> I have not been told the name of any person who might get my donation.
>
> I understand there will be no changes to how or when my abortion is done in order to get my blood or the tissue.
>
> I understand I will not be paid.
>
> I understand that I don't have to give my blood or pregnancy tissue, and this will not affect my current or future care at (affiliate name).[27]

Earlier versions of the guidance included a substantially similar consent form, although use of the consent form was required rather than recommended under the previous system of service approvals by PPFA, and substantive deviations from the consent form required approval from PPFA Medical Services.[28]

B. There Is No Evidence that Planned Parenthood Affiliates Knowingly Received Valuable Consideration in Exchange for Fetal Tissue

The Committee has received no evidence that any Planned Parenthood affiliate or employee ever received any "valuable consideration" for donated fetal tissue. The information and the documentary evidence received by the Committee support Planned Parenthood's assertions that the few affiliates that have participated in fetal tissue donation comply with the requirement to limit reimbursement to reasonable payments associated with facilitating tissue donation.

In an August 27, 2015, letter to congressional leaders, PPFA President Cecile Richards listed the reimbursement rates at affiliates that are currently or were recently participating in fetal tissue donation.[29] At present, only two out of PPFA's 59 affiliates are participating in fetal tissue donation, and only one affiliate is receiving any reimbursement for costs. An additional four affiliates facilitated fetal tissue donation for research in the past five years.[30] The California affiliate that is currently participating receives a reimbursement of $60 per tissue specimen from a TPO. The other four affiliates, which had participated in fetal tissue donation programs in the past five years, either sought no reimbursement or had reimbursement rates ranging from $45 to

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[27] Planned Parenthood Federation of America, Programs for Donation of Blood And/Or Aborted Pregnancy Tissue for Medical Research (May 2015).

[28] *See, e.g.*, Planned Parenthood Federation of America, PPFA Manual of Medical Standards and Guidelines: Programs for Donation of Blood and/or Aborted Pregnancy Tissue for Medical Research, Education, or Treatment (June 2011).

[29] Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015).

[30] Planned Parenthood Federation of America, U.S. House of Representatives Committee on Energy & Commerce, Subcommittee on Oversight & Investigations Follow-Up Questions Dated August 20, 2015.

$55 per tissue specimen.[31] The letter states, "[i]n every case, the affiliates report that these amounts were intended to recover only their costs, as allowed under the federal law and our guidance."[32] The evidence received by the Committee during the course of this investigation supports this assertion.

The May 2015 tissue donation guidance notes that affiliates "must be able to demonstrate the reimbursement represents its actual costs." Dr. McDonald-Mosley explained that the way that each affiliate determines cost is fact-specific to that affiliate.[33] Dr. Nucatola stated that fetal tissue donation is not a revenue stream for affiliates, and that reimbursement should generally be reasonable for the impact it has on the clinic.[34]

Both the statute governing fetal tissue donation and Planned Parenthood's May 2015 guidance on pregnancy tissue donation outline the exceptions for reimbursement. The types of costs that may arise for clinics facilitating tissue donation include staff time to identify patients who are interested in donating fetal tissue, staff time spent explaining fetal tissue donation and securing consent, staff time spent drawing maternal blood samples, space in the pathology lab, storage of supplies, sterilization of equipment, and other related costs.

In a briefing with the Committee, Cate Dyer, the Chief Executive Officer of StemExpress, stated that it is her understanding that the valuable consideration requirement applies to all fetal tissue her company obtains.[35] The contracts between StemExpress and two Planned Parenthood affiliates state, "The reasonable costs associated with the services specified in this Agreement shall be fifty-five dollars ($55.00) per POC [product of conception] determined in the clinic to be usable."[36] According to Dyer, the reimbursement covers the space and storage at the Planned Parenthood facility, particularly within the lab and pathology departments, sterilization of equipment, and staff participation in consent and facilitating involvement in the clinic. Additionally, clinic staff is also involved in obtaining maternal blood samples for StemExpress, so that the company can screen for infectious diseases. Dyer stated

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[31] Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015).

[32] *Id.*

[33] Briefing by Dr. Raegan McDonald-Mosley, Chief Medical Officer, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 14, 2015).

[34] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015).

[35] Briefing by Cate Dyer, Chief Executive Officer, StemExpress, to House Energy and Commerce Committee Staff (Aug. 25, 2015).

[36] Services Agreement between Stem-Ex, LLC and Planned Parenthood affiliate (Apr. 1, 2010), and Services Agreement between Stem-Ex, LLC and Planned Parenthood affiliate (May 15, 2012).

that she believed Planned Parenthood is losing money on fetal tissue donation, given the amount of staff time involved and space StemExpress takes up at the clinics.[37]

In a briefing with Committee staff, Dr. Ben Van Handel, the Executive Director of Novogenix Laboratories, confirmed that at the affiliate where Novogenix has a contract, Planned Parenthood set the price of $45 for services rendered on a per specimen basis.[38] The contract between Novogenix and the Planned Parenthood affiliate states, "Novogenix will reimburse [the Planned Parenthood affiliate] for reasonable administrative costs associated with the identification of potential donors, as well as the obtaining of informed consent."[39]

Similarly, in a briefing with Committee staff, Advanced Bioscience Resources (ABR) confirmed that the reimbursement rate at the Planned Parenthood affiliate with which they partner is $60 per patient product of conception.[40] The contract between ABR and the Planned Parenthood affiliate states:

> [Affiliate] will provide, and ABR will pay the reasonable costs for, services and facilities ... associated with obtaining consents and with the removal of fetal organs and tissues from POCs [products of conception], and their processing, preservation, quality control, transportation, and storage; including appropriate space in which ABR employees can work, disposal services for non-used portions of cadaveric materials, and for seeking consent for donation of tissues and organs from appropriate donors, and maintaining records of such consents so that verification of consent can be supported.[41]

C. There Is No Evidence That Planned Parenthood Physicians Conducted Intact Dilation and Evacuation To Preserve Fetal Tissue

To date, the Committee has received no evidence that any physician employed by Planned Parenthood affiliates has performed an "intact" dilation and evacuation (D&E) to preserve fetal tissue for research. CMP claims suggesting that Planned Parenthood physicians are violating the Partial Birth Abortion Act in order to preserve fetal tissue for research appear to have no basis in fact.

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[37] Briefing by Cate Dyer, Chief Executive Officer, StemExpress, to House Energy and Commerce Committee Staff (Aug. 25, 2015).

[38] Briefing by Dr. Ben Van Handel, Executive Director, Novogenix Laboratories, LLC, to House Energy and Commerce Committee Staff (Sept. 3, 2015).

[39] Specimen Donation Agreement Between Novogenix Laboratories, LLC and Planned Parenthood affiliate (Mar. 1, 2010).

[40] Briefing by Linda Tracy, President, Advanced Bioscience Resources, Inc., to House Energy and Commerce Committee Staff (Sept. 3, 2015).

[41] Agreement between Advanced Bioscience Resources, Inc., and Planned Parenthood affiliate (Oct. 1, 2010).

There are three primary methods of surgical abortion: D&E, induction of labor, and hysterotomy. D&E is the only method available at Planned Parenthood facilities.[42] In a briefing with Committee staff, Dr. McDonald-Mosley stated to the Committee that the confusion over "intact" fetuses is the result of deceptive video editing by CMP, and that she believes that the "intactness" that Planned Parenthood staff are referring to is the intactness of the tissue and specific organs. She noted that during most procedures, such as a D&E, the fetus is not delivered intact.[43] She stated there is no evidence that Planned Parenthood staff are removing the fetus in an intact manner.[44]

Similarly, Dr. Nucatola explained that it would be rare for a patient to be sufficiently dilated to deliver an intact fetus.[45] When questioned whether it was possible to do a D&E resulting in an intact fetus, she stated that while possible, no Planned Parenthood physician would intentionally perform such a procedure because to do so would be illegal.[46]

Representatives of all three TPOs also stated to the Committee that the donated fetal tissue specimens they receive do not include intact fetuses.[47]

D. There Is No Evidence That Planned Parenthood Physicians Altered the Timing, Method, Or Procedure Solely for the Purpose of Obtaining Fetal Tissue for Research

To date, the Committee has not obtained any evidence that Planned Parenthood physicians altered the timing, method, or procedure of an abortion solely for the purpose of obtaining fetal tissue for research. The law requires physicians to certify that "no alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue."[48] Although this section of the law applies only to federally funded research involving transplantation of human fetal tissue for therapeutic purposes, Planned

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[42] Briefing by Dr. Raegan McDonald-Mosley, Chief Medical Officer, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 14, 2015).

[43] *Id.*

[44] *Id.*

[45] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015).

[46] *Id.*

[47] Briefing by Cate Dyer, Chief Executive Officer, StemExpress, to House Energy and Commerce Committee Staff (Aug. 25, 2015); Briefing by Linda Tracy, President, Advanced Bioscience Resources, Inc. to House Energy and Commerce Committee Staff (Sept. 3, 2015); Briefing by Dr. Ben Van Handel, Executive Director, Novogenix Laboratories, LLC, to House Energy and Commerce Committee Staff (Sept. 3, 2015).

[48] 42 U.S.C. § 289g-1(b)(2)(A)(ii).

Parenthood has voluntarily incorporated the principles of the law into its tissue donation guidance.[49] The PPFA May 2015 guidance instructs affiliates that "[i]t must be documented that no substantive alteration in the timing of terminating the pregnancy or of the method used was made for the purpose of obtaining the blood and/or tissue."[50]

There are limited methods of abortion. At Planned Parenthood affiliates, there are two methods of an early abortion: (1) a medication abortion, and (2) surgical abortion involving mechanical or manual aspiration.[51] For abortions after approximately 13 weeks gestation, the only surgical abortion method available at a Planned Parenthood facility is D&E. A physician's decision about which method to use is made in consultation with the patient.[52]

PPFA has not identified any cases in which changes in methods for abortions were made for the purposes of fetal tissue donation.[53] It is reasonable for providers to make small adjustments in technique for clinical reasons, and such small adjustments would not constitute a change in method or procedure. As is common across the medical profession, techniques are different for each physician, and physicians commonly make clinical judgments to adjust their approach in the course of a surgery.[54]

Dr. Nucatola confirmed that changing the position of the fetus is not a change in the method or procedure; instead, it often needs to be done for patient safety. Although she does not personally change the position of the fetus in her practice, she believes that some physicians may need to convert the fetus to breech position in order to perform the abortion procedure safely; it is a matter of skill and experience.[55]

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[49] 42 U.S.C. § 289g-1(b)(2)(A)(ii); Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015).

[50] Planned Parenthood, Programs for Donation of Blood and/or Aborted Pregnancy Tissue for Medical Research (May 2015).

[51] Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015).

[52] *Id.*

[53] Briefing by Dr. Raegan McDonald-Mosley, Chief Medical Officer, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 14, 2015).

[54] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015); Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015).

[55] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015)

All Planned Parenthood staff emphasized that patient safety is their top priority. Dr. McDonald-Mosley stated, "The ultimate goal is the safety of the patient."[56] Dr. Nucatola said, "Patient safety comes first."[57] PPFA's August 27, 2015, letter reiterated the same message: "Our patient's health is our paramount concern."[58]

E. There Is No Evidence That Fetal Tissue Was Ever Obtained Without Appropriate Consent

To date, the Committee has not received evidence that Planned Parenthood affiliates or employees have been involved in obtaining fetal tissue without appropriate consent. For donated fetal tissue that will ultimately be used in federally funded fetal tissue transplantation research, the law requires that informed consent of the patient be obtained prior to donation of fetal tissue, after a separate consent for the abortion procedure has been obtained.[59]

Planned Parenthood has voluntarily incorporated the informed consent requirements into its guidance, and provides affiliates with a sample consent form that specifically tracks the requirements of the statute.[60] The consent form prompts the patient to affirm the following statement: "Before I was shown this consent, I had already decided to have an abortion and signed a consent form for it."[61]

Dr. Nucatola explained the process, as she understands it, for obtaining informed consent for tissue donation at the Planned Parenthood health center where she works.[62] First, a medical assistant counsels the patient in the counseling room and obtains informed consent for the abortion. The patient signs consent for the abortion before she knows the gestational age of the fetus. It is only after an exam to determine gestational age that a patient is given the option for tissue donation.[63]

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[56] Briefing by Dr. Raegan McDonald-Mosley, Chief Medical Officer, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 14, 2015).

[57] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015).

[58] Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015).

[59] 42 U.S.C. § 289g-1(b)(2)(A)(i).

[60] Planned Parenthood, Programs for Donation of Blood and/or Aborted Pregnancy Tissue for Medical Research (May 2015).

[61] *Id.*

[62] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015).

[63] *Id.*

At Planned Parenthood affiliates participating in fetal tissue donation, either Planned Parenthood staff or the tissue procurement organization are responsible for obtaining consent. Both StemExpress and ABR stated that there have been instances where their employees have obtained informed consent for the tissue donation, depending on timing and clinic staff availability.[64] According to officials from these companies, their staffs are trained in the process of obtaining patient consent.

Dyer explained that sometimes StemExpress employees obtain consent for tissue donation.[65] After the patient has consented to the abortion procedure, StemExpress can meet with those patients to review the donation consent and answer questions about the process. Regardless of whether the Planned Parenthood staff or the StemExpress staff obtain consent, the Planned Parenthood tissue donation consent form is used at the affiliate partnered with StemExpress.[66]

ABR stated that for the most part, Planned Parenthood staff obtains consents.[67] Occasionally, ABR staff obtains consent for the fetal tissue donation in Planned Parenthood affiliates, always using the Planned Parenthood consent form.

Dr. Van Handel stated that Novogenix ensures that informed consent has been obtained for all tissue they procure.[68] However, Novogenix employees have no involvement in the consent process because they do not interact with patients.

StemExpress and ABR stated unequivocally that they have never procured fetal tissue from a medical waste bin, as was suggested by one of the CMP videos. Dyer, CEO of StemExpress, confirmed that everything is done with consent.[69] Linda Tracy, President of ABR, confirmed that tissue has never been obtained from the waste bin at ABR or a facility where ABR works.[70]

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[64] Briefing by Cate Dyer, Chief Executive Officer, StemExpress, to House Energy and Commerce Committee Staff (Aug. 25, 2015), and briefing by Linda Tracy, President, Advanced Bioscience Resources, Inc., to House Energy and Commerce Committee Staff (Sept. 3, 2015).

[65] Briefing by Cate Dyer, Chief Executive Officer, StemExpress, to House Energy and Commerce Committee Staff (Aug. 25, 2015).

[66] *Id.*

[67] Briefing by Linda Tracy, President, Advanced Bioscience Resources, Inc., to House Energy and Commerce Committee Staff (Sept. 3, 2015).

[68] Briefing by Dr. Ben Van Handel, Executive Director, Novogenix Laboratories, LLC, to House Energy and Commerce Committee Staff (Sept. 3, 2015).

[69] Briefing by Cate Dyer, Chief Executive Officer, StemExpress, to House Energy and Commerce Committee Staff (Aug. 25, 2015).

[70] Briefing by Linda Tracy, President, Advanced Bioscience Resources, Inc., to House Energy and Commerce Committee Staff (Sept. 3, 2015).

III. EVIDENCE INDICATES THAT THE CENTER FOR MEDICAL PROGRESS MISREPRESENTED ITSELF TO GAIN ACCESS TO PLANNED PARENTHOOD FACILITIES AND PERSONNEL

According to Planned Parenthood officials, CMP made a number of misrepresentations and may have broken several federal and state laws by accessing Planned Parenthood personnel and facilities in the course of creating the videos.

David Daleiden, an anti-abortion activist and the CMP Project Lead, created a fake tissue procurement company called BioMax Procurement Services ("BioMax").[71] According to Planned Parenthood officials, using BioMax as a front company, CMP was able to gain access to medical conferences, Planned Parenthood staff, Planned Parenthood facilities, and staff from legitimate tissue procurement companies in an attempt to discredit Planned Parenthood and its affiliates.[72]

As explained in an August 27, 2015, letter sent from Cecile Richards to Speaker Boehner, in the course of their campaign, CMP officials may have violated state and federal laws by:

- violating federal tax laws by misrepresenting the Center for Medical Progress as a biomedicine or bioengineering organization in its application for nonprofit status;
- violating California criminal laws that prohibit forgery, fraud, and perjury by creating fake drivers licenses or obtaining official licenses fraudulently;
- violating California's Invasion of Privacy Act by recording individuals without consent; and
- violating California's penal code by making false charitable solicitations.[73]

CMP may have also committed identity theft and/or credit card fraud.[74] Daleiden's attorneys have advised a federal district court that he intends to invoke his Fifth Amendment right to refrain from self-incrimination in response to a lawsuit by the National Abortion Federation alleging that Daleiden and his associates violated federal and state laws.[75]

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[71] Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015).

[72] Letter from Roger K. Evans, Senior Counsel, Law & Policy, Planned Parenthood Federation of America, to Chairman Fred Upton, House Committee on Energy & Commerce (July 20, 2015).

[73] Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015).

[74] *Id.*

[75] Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015); Civil Minutes, National Abortion Federation v. Center for Medical Progress (case no. 15-cv-03522-WHO) (Aug. 21, 2015).

In a briefing with Committee staff, Dr. Nucatola stated that she first met the individuals posing as BioMax in April 2014 at a booth at the annual meeting of the National Abortion Federation, and they exchanged business cards.[76] These individuals claiming to represent BioMax then contacted Dr. Nucatola to request a meeting to discuss fetal tissue donation. According to Dr. Nucatola's briefing to Committee staff, she agreed to meet with them not to establish a business relationship, but simply to help this new "company" understand more about Planned Parenthood and fetal tissue donation. Dr. Nucatola explained to Committee staff that she accepted the meeting because her patients often want the option to donate and she supports that option, as well as the research that the donations support. Dr. Nucatola also informed Committee staff that she has never been in a role to contract with a TPO and played no role with respect to the contract for fetal tissue donation at the affiliate where she was a provider.[77]

BioMax also approached StemExpress under false pretenses, claiming to be a third party that could help source fetal tissue for research.[78] According to StemExpress, BioMax represented themselves as a company in the fetal tissue research business and signed a non-disclosure agreement with StemExpress. They subsequently violated the non-disclosure agreement, and StemExpress asserts that CMP or "BioMax" conducted themselves in a way that violated California law.[79]

IV. EVIDENCE INDICATES THAT THE CENTER FOR MEDICAL PROGRESS IS RELEASING INCOMPLETE AND DECEPTIVELY MANIPULATED TAPES TO THE PUBLIC

On July 14, 2015, CMP began regularly releasing videos purporting to capture Planned Parenthood and TPO staff discussing violations of the federal law that governs fetal tissue donation. Thus far, CMP has released nine videos, six of which depict undercover videos with Planned Parenthood and TPO staff. The three remaining videos feature interviews with a former StemExpress employee.

CMP has released the "full footage" for the six undercover videos and seven transcripts purportedly capturing the entirety of the videos.

On August 27, 2015, PPFA released a forensic analysis conducted by Fusion GPS of the first four videos and accompanying transcripts (both the long and short versions) released by

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[76] Briefing by Dr. Deborah Nucatola, Senior Director of Medical Services, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 27, 2015).

[77] *Id.*

[78] Briefing by Cate Dyer, Chief Executive Officer, StemExpress, to House Energy and Commerce Committee Staff (Aug. 25, 2015).

[79] Briefing by StemExpress to House Energy and Commerce Committee Staff (Sept. 2, 2015).

CMP between July 14, 2015 and August 4, 2015.[80] According to its website, Fusion GPS is a Washington D.C. based firm that "provides premium research, strategic intelligence, and due diligence services to corporations, law firms, and investors worldwide."[81] In conducting their analysis, Fusion GPS additionally commissioned the services of several qualified experts to review both the videos and the accompanying transcripts. [82]

A. Fusion GPS Found That The CMP Videos Lack Credibility and Have "No Evidentiary Value"

Fusion GPS reviewed four "full footage" videos, which collectively totaled approximately 12 hours of video footage.[83] The Fusion GPS analysis found that, "A thorough review of these videos in consultation with qualified experts found that they do not present a complete or accurate record of the events they purport to depict." They concluded that, "CMP edited content out of the alleged 'full footage' videos, and heavily edited the short videos so as to misrepresent statements made by Planned Parenthood representatives."

The Fusion GPS analysis concluded that the videos have questionable "evidentiary value."[84] The analysis states, "the manipulation of the videos does mean they have no evidentiary value in a legal context and cannot be relied upon for any official inquiries unless supplemented by CMP's original material and forensic authentication that this material is supplied in unaltered form. The videos also lack credibility as journalistic products."

Fusion GPS also hired an independent transcription agency to examine and transcribe the four short and "full footage" videos released by CMP between the dates of July 14, 2015, and August 4, 2015.[85] Fusion GPS found all four transcripts by CMP "contain substantive omissions," and one transcript "appears to be grossly edited." Fusion GPS therefore concluded that the transcripts released by CMP "cannot be relied upon in official inquiries as a credible text record of what is said in the videos."[86]

B. The CMP Videos Repeatedly Omitted Representations by Planned Parenthood Staff About Compliance with the Law

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[80] Letter from Cecile Richards, President, Planned Parenthood Federation of America, to Speaker John A. Boehner, et al (Aug. 27, 2015). *CMP Analysis*, Fusion GPS (Aug. 25, 2015).

[81] Fusion GPS, CMP Analysis (Aug. 25, 2015).

[82] *See*, Fusion GPS (online at www.fusiongps.com/) (accessed Sept. 4. 2015).

[83] *Id.*

[84] *Id.*

[85] *See* TranscriptionWing (online at www.transcriptionwing.com) (accessed Sept. 4, 2015).

[86] Fusion GPS, CMP Analysis (Aug. 25, 2015).

Similar to the findings by Fusion GPS, Planned Parenthood also found that CMP deceptively edited the videos to suggest deliberate violations of the law.[87] According to briefings with Committee staff, the short videos deliberately omitted most mentions of efforts to comply with the law, discussions of fetal tissue donation as a not-for-profit activity, and conversations about the consent process. In a briefing, PPFA told Committee staff that without the master tapes, key questions could not be answered about them.[88]

PPFA also reported that Dr. Nucatola emphasized that Planned Parenthood is not profit seeking at least 10 times, but nine of those statements were omitted from the short-form video.[89] A discussion of affiliates seeking to "break even" was also omitted. Additionally, Dr. Nucatola raised consent requirements 37 times, but none of those are in the short version of the video.

PPFA also stated that Melissa Farrell, the Director of Research at Planned Parenthood Gulf Coast, an affiliate captured in the undercover videos, referenced compliance with federal and state laws, but that is not included in the short video. Moreover, according to PPFA, Planned Parenthood Gulf Coast does not even have a fetal tissue donation program. Although the CMP video does not make this clear, the Gulf Coast affiliate had only a placental and decidua donation program in place.[90]

V. IMPORTANCE OF FETAL TISSUE RESEARCH

The Committee has received evidence regarding the continuing importance of fetal tissue in basic scientific research. Although NIH has not funded human fetal tissue transplantation research since 2007, it continues to fund other research using fetal tissue.[91] In fiscal year 2014, NIH funded $76 million in research involving fetal tissue.[92]

Since the 1930's, fetal tissue has been used in a broad range of research that has led to lifesaving discoveries. In the past, human fetal tissue research has been critical in establishing permanent cell lines for use in vaccine research for diseases such as polio, hepatitis A, measles, mumps, rubella, chickenpox, and rabies. These established cell lines are currently being used to establish an Ebola vaccine.

According to information provided by the NIH, fetal tissue continues to be an important resource for biomedical research. Fetal tissue is used when scientists need a cellular system that

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[87] Briefing by Dr. Raegan McDonald-Mosley, Chief Medical Officer, Planned Parenthood Federation of America, to House Energy and Commerce Committee Staff (Aug. 14, 2015).

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] Briefing by the National Institutes of Health to House Energy and Commerce Committee Staff (Sept. 1, 2015).

[92] *Id.*

is less differentiated than adult cells.[93] According to the Department of Health and Human Services, "fetal tissue continues to be a critical resource for important efforts such as research on degenerative eye disease, human development disorders such as Down syndrome, and infectious diseases, among a host of other diseases."[94]

Some commentators have argued that technological advances have obviated the need for research using fetal tissue. When questioned about whether there are alternatives to fetal tissue for stem cell research, such as induced pluripotent stem cells derived from adult tissue, NIH acknowledged that such technology bears promise. However, according to NIH, the technology is not yet mature, and for the immediate future, fetal stem cells continue to play an important role in scientific research. Indeed, during the period while the new technologies are being developed NIH said that it is important to continue to have access to fetal tissue to validate these new methods.[95]

NIH also explained the value of fetal tissue studies of diseases and conditions that affect fetal health and development, organ development, and neural development.[96] NIH noted that for the study of fetal growth and human development fetal tissue could not currently be replaced.

VI. CONCLUSION

The Committee's ongoing investigation into Planned Parenthood's fetal tissue donation program to date has uncovered no evidence that Planned Parenthood and its affiliates have violated the law. The Committee has received letters and documents and has conducted bipartisan briefings with individuals familiar with Planned Parenthood's fetal tissue donation program. The information the Committee has gathered revealed that (1) there is no evidence that Planned Parenthood affiliates knowingly received valuable consideration in exchange for fetal tissue; (2) there is no evidence that Planned Parenthood physicians conducted intact dilation and evacuation to preserve fetal tissue for research; (3) there is no evidence that Planned Parenthood physicians altered the timing, method, or procedure solely for the purpose of obtaining fetal tissue for research; and (4) there is no evidence that fetal tissue was ever obtained without appropriate consent. Furthermore, the investigation has found that Planned Parenthood requires its affiliates to meet stricter standards than are required by federal law.

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[93] *Id.*

[94] Letter from Jim Esquea, Assistant Secretary for Legislation, Department of Health and Human Services, to Senators Joni Ernst and Roy Blunt (Aug. 14, 2015).

[95] Briefing by the National Institutes of Health to House Energy and Commerce Committee Staff (Sept. 1, 2015).

[96] Briefing by the National Institutes of Health to House Energy and Commerce Committee Staff (Sept. 1, 2015).

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How Texas Lawmakers Continue To Undermine Women's Health

Posted By Kinsey Hasstedt On May 20, 2015 @ 9:00 am In Equity and Disparities,Population Health | No Comments

For years, Texas has had the highest proportion of uninsured individuals overall, and for adult women specifically, of any state. In 2013, one in five Texans [1] had no health insurance of any kind, including 2.1 million adult women [2].

Beyond limited access to health coverage, Texas consistently has lackluster health indicators — particularly with regard to sexual and reproductive health care. Yet, at seemingly every turn [3], state lawmakers continue to implement neglectful, or even hostile, policies that hinder access to affordable sexual and reproductive health care and information, especially among low-income Texas women and teens.

Those policies include the state's ongoing refusal to adopt the Affordable Care Act's expansion of full-benefit Medicaid; its frequent attacks on family planning funding and providers; its dogged insistence on an abstinence-only approach to sex education; and its escalating restrictions [4] on access to abortion.

Indeed, a recent study [5] found that 55 percent of Texas women surveyed now face at least one barrier to reproductive health care, including affordability of services and access to providers with whom they feel comfortable.

Two recent developments highlight the state's misguided approach.

Family Planning Access

Recently released data [6] from the state details the declining effectiveness of the Texas Women's Health Program. The program was established in 2007 as a joint state-federal effort, when Texas joined about half the states in expanding Medicaid eligibility specifically for family planning services for low-income women not otherwise eligible for Medicaid.

In 2011, however, the state took several major steps [3] to reverse course, including a move to ban any health centers from participating in the program if the center provides abortion or is associated with a provider that does. This decision to unlawfully discriminate against qualified providers ultimately resulted in the state forgoing significant federal financial support for the program — losing $9 for every $1 dollar that the state would spend.

Texas continued the program as a completely state-run, state-funded effort, with a more limited provider network. (Around the same time, the state began targeting health centers that provide family planning services in other ways, such as disadvantaging them in the allocation of state family planning dollars.)

The consequences of that decision are now clear. According to the state's recent report [6], in nearly every part of the state, the Texas Women's Health Program served fewer women in 2013 (its first year as an entirely state-run program) than it served in 2011 (before the new restrictions took effect).

Statewide, there was a 9 percent decrease in enrollees, a 26 percent decrease in Medicaid claims and a 54 percent decline in contraceptive claims specifically, indicating a considerable decline in service utilization among enrollees. Further, from 2011 to 2013, Texas saw a 67 percent decline in net savings from family planning [7]. (These government savings accrue from helping women and couples prevent unplanned births where the maternity and infant care would have been paid for by Medicaid.)

The state itself attributes these declines in part to its exclusion of many health centers that specialize in the provision of family planning services. In 2013, the vast majority of the more than 3,800 providers participating in the Texas Women's Health Program were private physicians; only 5 percent were safety-net health centers specializing in family planning services, and another 5 percent were federally qualified health centers delivering such care as part of a broader set of services.

Low-income women [8] are particularly likely to rely on such safety-net sources for their sexual and reproductive health care; that is especially true for women of color and immigrant women, of which Texas has particularly large proportions. Additionally, women specifically seek care [9] for issues having to do with sex and birth control at health centers that specialize in family planning services — providers the Texas Women's Health Program now largely excludes.

Even in 2012, only 13 percent [10] of the need for publicly funded family planning services in Texas was met by safety-net family planning centers, the lowest proportion in the country — and less than half the national average.

Overall, thousands fewer Texas women received any given contraceptive method through the program in 2013 compared to 2011. Ironically, this comes as Guttmacher data [10] shows a rising need for publicly funded family planning services in the state, driven by an increase in the number of poor and low-income women: From 2000 to 2012, the number of Texas woman needing publicly supported contraceptive care grew by 34 percent, to more than 1.7 million. And, nearly half (45 percent) [10] of these women were uninsured in 2012, the highest proportion in the nation.

Notably, even before Texas lawmakers so drastically limited women's access to contraceptive care, the state faced high rates of unintended pregnancy. In 2010, there were 56 unintended pregnancies per 1,000 [11] Texas women, substantially above the national median.

Restricting access to family planning services can only exacerbate women's risk of unintended pregnancy and limit the ability of women and families to achieve other social and economic [12] life goals. Plus, nationwide, every public dollar invested in family planning services results in $7 [13] in taxpayer savings.

Sex and HIV Education and Care

Texas lawmakers also continue to carry out an ideological campaign against young people's access to honest information on sex, including pregnancy and sexually transmitted infections (STI) prevention.

In March, for example, State Rep. Stuart Spitzer (R) won the House's approval in moving $3 million [14] from human immunodeficiency virus (HIV)/STI prevention programs to funding for abstinence-only-until-marriage education, stating, "My goal is for everyone to be abstinent until they are married." (Whether this maneuver will become law is unclear; it is still pending before the state legislature.)

There is ample evidence the state's abstinence-only approach to sex education has not been working. In 2010, Texas had the third-highest [15] teen pregnancy rate in the country, the fourth-highest teen birthrate, and the highest prevalence [16] of repeat teen births.

Asked about the questionable efficacy of the abstinence-only program, Rep. Spitzer said, "It may not be working well...But abstinence education is HIV prevention. They are essentially the same thing."

Of course, this is not the case, and if anything, lawmakers should be doing more to connect Texas teens and women to services that help reduce the risk of both unintended pregnancy and STIs, including HIV. Texas women experience rates of chlamydia, gonorrhea and syphilis [17] well above the national average. Moreover, Texas ranks among the top 10 states in annual rates of new diagnoses of HIV [18] and cervical cancer [19].

Cutting funding for prevention programs, denying access to factual information on sex, unintended pregnancy and STIs, and restricting women's access to the safety-net providers that are particularly well-suited to delivering preventive sexual and reproductive health care can only further harm Texas women and the state as a whole.

Unfortunately, Texas is not alone in terms of the breadth and depth of its attacks on women's reproductive health. Too many other states are going down the same path, potentially leading to similarly harsh consequences for the women and families who live there.

But as Texas lawmakers continue to obstruct access to health coverage and care—especially sexual and reproductive health services and information—their policy decisions stand as a stark warning for the rest of the nation.

Editor's Note: *An earlier version of this post incorrectly listed the percentage that Texas saw a decline in net savings from family planning as 73 percent and has now been corrected.*

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URLs in this post:

[1] one in five Texans: **http://kff.org/other/state-indicator/total-population/**
[2] 2.1 million adult women: **http://kff.org/other/state-indicator/nonelderly-adult-women/**
[3] at seemingly every turn: **http://www.guttmacher.org/pubs/gpr/17/2/gpr170214.html**
[4] escalating restrictions: **http://www.chron.com/news/politics/texas/article/Texas-Senate-OK-s-ban-on-abortion-coverage-in-6243540.php**
[5] a recent study: **http://www.utexas.edu/cola/orgs/txpep/_files/pdf/TxPEP-ResearchBrief_Barriers-to-Family-Planning-Access-in-Texas_May2015.pdf**
[6] Recently released data: **http://www.hhsc.state.tx.us/reports/2015/tx-womens-health-program-rider-44-report.pdf**
[7] net savings from family planning: **http://www.hhsc.state.tx.us/reports/2013/Rider-48-WHP-08-16-13.pdf**
[8] Low-income women: **http://www.guttmacher.org/pubs/sources-of-care-2013.pdf**
[9] specifically seek care: **http://www.guttmacher.org/pubs/journals/j.whi.2012.09.002.pdf**
[10] only 13 percent: **http://www.guttmacher.org/pubs/win/contraceptive-needs-2012.pdf**
[11] 56 unintended pregnancies per 1,000: **http://www.guttmacher.org/pubs/StateUP10.pdf**
[12] social and economic: **http://www.guttmacher.org/pubs/social-economic-benefits.pdf**
[13] results in $7: **http://www.guttmacher.org/pubs/gpr/17/4/gpr170402.html**
[14] moving $3 million: **https://www.texastribune.org/2015/03/31/abstinence-funding-devolves-uncomfortable-debate/**
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[16] highest prevalence: **http://www.cdc.gov/media/dpk/2013/media/dpk-teen-repeat-births-mmwr_040113.pdf**
[17] rates of chlamydia, gonorrhea and syphilis: **http://www.cdc.gov/std/stats13/surv2013-print.pdf**
[18] HIV: **http://kff.org/hivaids/state-indicator/estimated-rates-per-100000-of-hiv-diagnoses-adults-and-adolescents-by-gender/**
[19] cervical cancer: **http://kff.org/other/state-indicator/cervical-cancer-rate/**

Texas Women's Health Program:

Savings and Performance Reporting

As Required By

Rider 44, Senate Bill 1

83rd Legislature

Regular Session, 2013

Strategic Decision Support ◆ Financial Services Division

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

132

January 2015

Introduction

Background

S.B. 747, 79th Legislature, Regular Session, 2005, directed the Health & Human Services Commission (HHSC) to establish a five-year demonstration project through the state's medical assistance program to expand access to family planning services for women. HHSC received approval from the Centers of Medicare and Medicaid Services (CMS) to operate the Women's Health Program (WHP) under a Medicaid family planning Section 1115 waiver on December 21, 2006. HHSC began provider services under the five-year demonstration on January 1, 2007.

S.B. 7, 82nd Legislature, First Called Session, 2011, directed HHSC to ensure that any funds spent for purposes of the Medicaid Women's Health Program or a successor program is not used to perform or promote elective abortions or to contract with an entity that performs or promotes elective abortions or that affiliates with entities that perform or promote elective abortions. On March 15, 2012, CMS informed HHSC that because the state was implementing its statutory requirement to exclude affiliates of elective abortion providers from participating in WHP, it would not extend or renew the waiver except for the purposes of phasing out WHP. On March 16, 2012, CMS extended the waiver until December 31, 2012, for the purpose of implementing an orderly phase-out of the program's Medicaid funding.

To prevent the loss of this program for Texas women, HHSC was directed to transition the Medicaid program to a state-funded program. WHP was renamed the Texas Women's Health Program (TWHP) and transitioned to a fully state-funded program in January 2013.

The TWHP offers low income Texas women family planning counseling and education, one family planning exam each year, birth control, the treatment of certain STDs (not including AIDS) and follow up visits related to the method of birth control.

Rider 44

Texas Women's Health Program: Savings and Performance Reporting. It is the intent of the Legislature that the Health and Human Services Commission submit a bi-annual [once every two years] report to the Legislative Budget Board and the Governor that includes the following information:

a. enrollment levels of targeted low-income women and service utilization by geographic region, delivery system and age;
b. savings or expenditures in the Medicaid program that are attributable to enrollment levels reported in section (a);
c. descriptions of all outreach activities undertaken for the reporting period; and
d. the total number of providers enrolled in the Texas Women's Health Program network.

It is the intent of the Legislature that if the findings of the report show a reduction in women enrolled or of service utilization greater than ten percent relative to calendar year 2011, the agency shall, within existing resources, undertake corrective measures to expand provider capacity and/or client outreach and enrollment efforts.

Enrollment

There were 188,245 women enrolled in the TWHP in Fiscal Year 2013. The total unduplicated number of enrolled women in the WHP Fiscal Year 2011 is 207,041. This is a reduction of 9.1 percent in the total number of enrolled women.

Table 1 - Clients Enrolled by HHSC Region
Fiscal Years 2011 and 2013

HHSC Region	FY 2011	FY 2013	% change
1 High Plains	11,213	6,997	-37.6%
2 Northwest Texas	4,704	4,253	-9.6%
3 Metroplex	29,575	31,262	5.7%
4 Upper East Texas	9,838	8,821	-10.3%
5 Southeast Texas	7,881	7,106	-9.8%
6 Gulf Coast	50,346	47,443	-5.8%
7 Central Texas	24,435	21,773	-10.9%
8 Upper South Texas	27,667	24,563	-11.2%
9 West Texas	7,063	4,195	-40.6%
10 Upper Rio Grande	8,177	9,684	18.4%
11 Lower South Texas	29,756	25,031	-15.9%
Statewide	207,041	188,245	-9.1%

Note: The sum of all the regions for each fiscal year are greater statewide total shown in Table 1 because a client can show up in each region she has lived in for that fiscal year.

Source: TMHP, AHQP, TWHP/WHP Claims Data

Utilization

An unduplicated total of 85,619 women had a Medicaid claim for TWHP services received in Fiscal Year 2013. The number for Fiscal Year 2011 was 115,226 women. This is a reduction of 25.7 percent in utilization. All services were provided and reimbursed on a fee-for-service basis.

Service Utilization by Geographic Region

The HHSC Region of residence for TWHP clients with a paid claim in Fiscal Year 2013 is compared to the same for clients of the WHP in 2011 in the following table. Numbers are down

for all regions except Region 10, the Upper Rio Grande region. West Texas is the most affected region in terms of percentages seeing a reduction of 64 percent in utilization. In terms of total number of women served, Central Texas experienced the biggest reduction with 5,312 fewer clients with a paid claim in Fiscal Year 2013. The reduction in the number of women served is due, in part, to the change in the provider base that occurred in January 2012 with the exclusion of abortion providers and affiliates. These providers dispensed more oral contraceptives in the clinic than other provider types. Women must make a visit to the clinic to obtain refills of their oral contraception; these visits are considered a service as shown in Table 2. Women receiving contraceptive services by other provider types are typically given a prescription and would simply make a trip to the pharmacy, which are not counted as a rendered service.

Table 2 - Clients Served by HHSC Region
Fiscal Years 2011 and 2013

HHSC Region	FY 2013	FY 2011	% Change
1 High Plains	3,415	7,266	-53.0%
2 Northwest Texas	2,154	2,867	-24.9%
3 Metroplex	14,382	16,754	-14.2%
4 Upper East Texas	3,960	4,927	-19.6%
5 Southeast Texas	2,939	3,847	-23.6%
6 Gulf Coast	21,259	25,246	-15.8%
7 Central Texas	7,333	12,645	-42.0%
8 Upper South Texas	10,497	15,215	-31.0%
9 West Texas	1,448	4,048	-64.2%
10 Upper Rio Grande	**4,716**	**3,804**	**24.0%**
11 Lower South Texas	13,509	18,711	-27.8%
Statewide	85,619	115,226	-25.7%

Note: Figures may not add because 1) women may reside in multiple regions over the year and would be counted in each resident region, and 2) a client's county of residence may not be available in the utilization data and would then only be counted in the statewide totals.

Source: TMHP, AHQP, TWHP/WHP Claims Data

Service Utilization by Method

In Table 3, we see the number of claims by type of contraceptive. When comparing to Fiscal Year 2011we can see that, the claims for injections and condoms went up as a percentage of the total and claims for oral contraceptives went down as a percentage of total claims. It is important to note that this shift does not just reflect a change in utilization over time, but a shift from less effective methods (e.g., oral contraceptives) to very effective methods of contraception (e.g., LARCs and injectables). The literature indicates that these methods are far more reliable in preventing unintended pregnancies and are less impacted by client behavior (i.e., remembering to take oral contraception every day).

Table 3 - Number of Claims by Type of Contraceptive
Fiscal Years 2011 and 2013

Type	FY 2013	% Total FY 2013	FY 2011	% Total FY 2011
LARC	4,952	5.6%	6,573	3.4%
Injection	34,629	39.2%	51,991	27.2%
Oral	14,868	16.8%	59,169	31.0%
Condom	25,702	29.1%	53,317	27.9%
Other	8,130	9.2%	20,109	10.5%
Total	88,281	100.0%	191,159	100.0%

Source: TMHP, AHQP, TWHP/WHP Claims Data

Savings and Expenditures

Monthly caseload average in Fiscal Year 2013 was 115,440 women. That number represents an annual cost of $31.67 million.

The decrease in Medicaid costs due to the use of family planning services is estimated by the reduction in the expected number of births for WHP participants had there been no program. The estimated Medicaid cost of these births (including the costs of prenatal care, delivery, postpartum care, and the first year of infant care) is considered a Medicaid savings due to the reduction in expected births. Due to the lag of nine months for the realization of the births, the savings attributed to caseload in Fiscal Year 2013 will be realized in Fiscal Year 2014. According to HHSC estimations, the monthly caseload average in Fiscal Year 2013 of 115,440 women will represent a reduction of 8,359 births in Fiscal Year 2014. This reduction represents total savings of $93.6 million for Medicaid at an estimated rate of cost per birth of $11,193. Of this total, $55.5 million are federal funds savings and $38.1 million in savings for the state. This gives a net savings of $6.43 million after subtracting the annual cost.

Total Number of Providers in the TWHP Network

Eligible TWHP providers are those who deliver family planning services, have completed the Medicaid enrollment process through the state's Medicaid claims administrator and have certified they are in compliance with Texas Human Resources Code 32.024(c-1) and 25 Texas Administrative Code §§ 39.31 - 39.45, prohibiting providers from performing elective abortions or affiliating with providers of elective abortions.

There were 3,854 providers in the TWHP network as of June 2014. Table 4 displays providers by provider type and percentage of total.

Table 4 - Number of Providers by Provider Type
As Of June 2014

Provider Type	Number	%Total
Family planning clinic	189	4.9%
Federally qualified health centers (FQHCs)	194	5.0%
Maternity service clinic (MSC)	7	0.2%
Physician (DO)	246	6.4%
Physician (MD)	2459	63.8%
Physician Assistant/Nurse Practitioner/Clinical Nurse Specialist (PA/NP/CNS)	23	0.6%
Physician group (DOs only)	6	0.2%
Physician group (MDs only and multispecialty)	635	16.5%
Rural health clinic (RHC) Hospital based	53	1.4%
Rural health clinic (RHC) Independent	41	1.1%
Total	3853	100.0%

Source: TMHP, AHQP, TWHP/WHP Claims Data

Outreach

During Fiscal Year 2013, HHSC employed a two-pronged outreach strategy targeting both TWHP providers and TWHP clients.

Client Outreach

Client outreach efforts during Fiscal Year 2013 included:

- Mailing brochures, outreach letters, and new benefit cards to existing clients to provide information about the program and finding a provider.
- Distributing new outreach materials to community-based organizations, HHSC regional offices, and service providers.

HHSC also continued efforts to assist clients in locating a provider, including the maintenance of the client call center and the active client referral process, as well as the maintenance of the client website and the validation of contact information of providers listed in the online provider look-up that allows clients to identify certified providers in their area by specialty-type.

In response to the reduction in both enrollment and service utilization levels in Fiscal Year 2013, relative to calendar year 2011, HHSC undertook corrective measures to expand client outreach and enrollment efforts within existing resources as required by the 2014-15 General Appropriations Act (Article II, Health and Human Services Commission, Rider 44, S.B. 1, 83rd Legislature, Regular Session, 2013). HHSC prepared for a targeted mailing effort by developing TWHP outreach materials and printing application forms. Materials and applications were mailed to just under 1 million women in Texas that potentially met TWHP's age and financial eligibility requirements in the first quarter of Fiscal Year 2014.

Provider Outreach

HHSC also conducted provider outreach efforts focused on:

- Increasing the number of providers accepting and actively serving TWHP clients and retaining the current population of this provider base.
- Identifying geographical areas where TWHP provider-to-client ratios are lowest, and employing targeted outreach in these areas.

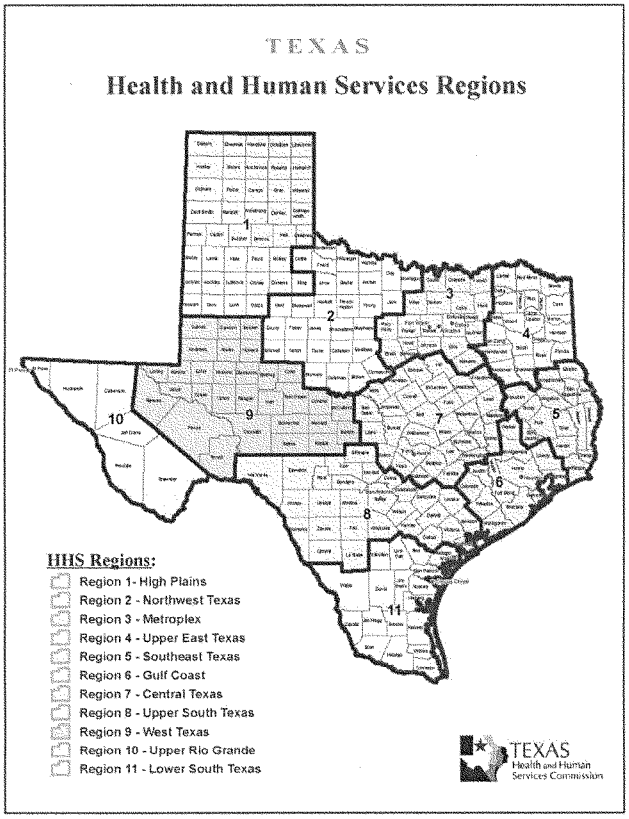
Provider outreach strategies varied according to the target audience and included both community-based and person-to-person outreach. A key strategy included working with community partners and professional organizations. Other outreach strategies included outreach through direct mail, email, phone calls, professional newsletter notifications, website updates, printed materials, and recruitment at provider conventions. Throughout Fiscal Year 2013, phone outreach was conducted on an ongoing basis to retain previously certified TWHP providers who had not completed the TWHP recertification process and to recruit additional Medicaid providers that could perform TWHP services.

Conclusion

In Fiscal Year 2013, there were 188,245 women enrolled in the TWHP. An unduplicated total of 85,619 women had a Medicaid claim for TWHP services received in Fiscal Year 2013. With an average monthly caseload of 115,440 women, the annual cost for TWHP services is $31.67 million. Due to the lag of nine months for the realization of the births, the savings attributed to caseload in Fiscal Year 2013 will be realized in Fiscal Year 2014. According to HHSC estimations, the monthly caseload average in Fiscal Year 2013 of 115,440 women will represent a reduction of 8,359 births in Fiscal Year 2014. At an estimated cost of $11,193 per birth, HHSC estimates a total savings of $93.6 million for Medicaid. Of this total, $55.5 million are federal fund savings and $38.1 million are state fund savings.

Appendix A

Map 1: Map of the HHSC Regions



Planned Parenthood, Community Health Centers, And Women's Health: Getting The Facts Right

Posted By Sara Rosenbaum On September 2, 2015 @ 9:43 am In Costs and Spending,Equity and Disparities,Health Professionals,Long-term Services and Supports,Organization and Delivery,Population Health,Public Health,Quality | 4 Comments

The current Planned Parenthood fight, one of the most disturbing battles over women's health in recent years, has been riddled with inaccuracies. A particularly damaging one is the assertion that the nation's community health centers could pick up the slack if Planned Parenthood is defunded.

I have worked with community health centers for nearly 40 years, and no one believes more strongly than I do in their ability to transform the primary health care landscape in medically underserved low-income communities. But a claim that community health centers readily can absorb the loss of Planned Parenthood clinics amounts to a gross misrepresentation of what even the best community health centers in the country would be able to do were Planned Parenthood [1] to lose over 40 percent of its operating revenues overnight as the result of a ban on federal funding.

For the millions of poor women who depend on Planned Parenthood clinics, this scenario would mean the loss of affordable and accessible contraceptive services and counseling, as well as breast and cervical cancer screenings and testing and treatment for sexually transmitted infections (STIs). The assertion that community health centers could step into a breach of this magnitude is simply wrong and displays a fundamental misunderstanding of how the health care system works.

For now, legislation that would have cost the organization its ability to receive federal funding has failed (S. 1881, 114th Cong., 1st session [2]). But given the frenzy surrounding the issue, it is likely that the subject will be revisited when Congress returns from its August recess.

The Challenges Facing Community Health Centers

Today community health centers serve about 6 million women of childbearing age [3], about one quarter of all low-income women of reproductive health age. In our recent study of community health centers and family planning [4] we found that 59 percent of nearly 2,000 women surveyed obtain family planning services at community health centers and report a high degree of satisfaction, but 40 percent of those who use community health centers also go elsewhere.

Community health center patients are deeply impoverished — over 90 percent have incomes below twice the federal poverty level, and and even with the Affordable Care Act's insurance expansions a large proportion remain uninsured, especially in the Medicaid non-expansion states. Thus, it is likely that these women obtain care at other publicly supported programs, including clinics operated by Planned Parenthood affiliates.

It is important to set the record straight about what it would mean to women were health centers suddenly to have to respond to a hole in care of this magnitude, especially given absurd claims about their financial ability to do so, such as assertions that community health centers could do so for $1.67 per patient [5]. Community health centers are extremely efficient, but the cost of caring for their patients averages about $600 per person annually [6].

While community health centers constitute a vital component of the nation's primary care safety net, three reasons underscore why it's misguided to suggest community health centers could—overnight—compensate for the loss of affordable women's health services at Planned Parenthood clinics.

1. For every patient served by a community health center today, nearly three residents of low-income communities remain without access to primary health care.

The major growth of community health centers [7] is recognition of their importance to the health system and their value to medically underserved communities. Their expansion over the past 15 years, beginning with an initiative launched by President George W. Bush and continuing under the Obama Administration, has been essential to creating health care access.

But even as community health centers close in on 23 million patients served, the National Association of Community Health Centers reports that an estimated 62 million more low-income Americans [8] face elevated health risks and remain without a regular source of primary health care. In the communities they serve, community health centers depend on other sources of affordable health care to help meet their residents' health care needs.

What's more, federal law requires that community health centers be located in communities where there are few other providers. As a result, the notion that there are plenty of community health centers available in those communities to compensate for the loss of Planned Parenthood clinics simply is untrue.

2. A sudden cutoff in funding would create an immediate health care access crisis for millions of women, placing enormous strain on community health centers and other providers.

During the Senate debate over whether to defund Planned Parenthood clinics, California's community health centers wrote to Senator Barbara Boxer that the loss of Planned Parenthood clinics would place "untenable stress" on remaining health care providers, including the state's community health centers (Letter from Andie-Martinez Patterson [9] to the Honorable Barbara Boxer, July 30, 2015).

Community health centers have seen this type of community health threat before. In Texas, the Governor and Legislature in 2012 moved to exclude Planned Parenthood clinics from that state's family planning program; non-Planned Parenthood clinics were faced with having to increase their women's health service capacity by 81 percent on average simply to overcome the loss of Planned Parenthood services.

In Hidalgo County alone, other health care providers, including community health centers, faced a potential 531 percent overnight increase in service demand [10]. Community health centers struggled to meet a surge in need; it is not known how many women faced delays in securing access to care, including life-saving cancer screenings and essential birth control services, as a result.

The state of Texas itself quantified the impact of its decision on women. According to a 2013 report, in nearly every part of the state, the Texas Women's Health Program served fewer women in 2013 (its first year as an entirely state-run program) than it served in 2011 (before the new restrictions took effect). With the loss of family planning clinics, the state experienced [11] a 9 percent decrease in program enrollees, a 26 percent decrease in Medicaid claims and a 54 percent decline in contraceptive claims, all of which illustrate the serious drop-off in utilization that occurred.

Our survey of family planning and community health center patients, the first study ever to examine their experiences in obtaining family planning services, found that only 10 percent were actively trying to get pregnant. This figure underscores that the need for ready access to effective family planning services in poor communities is no less compelling than in better-resourced communities.

3. Community health centers offer women's health services as part of comprehensive primary care programs that must meet a broad array of health care needs among community residents of all ages. They cannot simply put their other responsibilities aside.

Although community health centers count millions of women of childbearing age as their patients, they also are the principal source of care for far more than family planning and preventive care related to the special health needs of women. In the communities they serve, community health centers frequently are the only source of mental health care, dental care, and treatment for patients with serious and chronic health conditions such as hypertension, cardiovascular disease, and diabetes.

Community health centers deliver over one million babies annually. Furthermore, community health centers' services must be available to all community residents regardless of age, not just women of childbearing age.

Efficient, But Not Magic

Community health centers operate on modest budgets and repeatedly have been shown to be highly efficient. But no amount of efficiency can give them the means to ramp up quickly enough to replace the loss of preventive women's health services of the magnitude that would result were Planned Parenthood clinics to close. Unable to access the contraceptive care they need, women would be left to pay the price, as more unintended pregnancies and abortions result.

The last thing that the nation's most vulnerable communities—and the community health centers that serve them—need is a blow of this magnitude. Tens of millions of children and adults whose poverty creates health care access barriers depend on community health centers. But community health centers are not health care magicians. The health care system simply does not work this way.

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[2] S. 1881, 114th Cong., 1st session: **https://www.congress.gov/bill/114th-congress/senate-bill/1881/text**
[3] women of childbearing age: **https://publichealth.gwu.edu/pdf/hp/health-centers-family-planning-update.pdf**
[4] community health centers and family planning: **https://publichealth.gwu.edu/sites/default/files/Geiger_Gibson_Family_Planning_Report_2015.pdf**
[5] $1.67 per patient: **https://www.lozierinstitute.org/planned-parenthood-the-way-of-the-fotomat/**
[6] $600 per person annually: **https://www.nachc.com/client/A%20Local%20Prescription%20Final%20brief%203%2022%2011.pdf**
[7] community health centers: **http://content.healthaffairs.org/content/34/7/1096.abstract**
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[9] Letter from Andie-Martinez Patterson: **http://www.gpo.gov/fdsys/pkg/CREC-2015-08-03/pdf/CREC-2015-08-03-senate.pdf**
[10] service demand: **http://hsrc.himmelfarb.gwu.edu/cgi/viewcontent.cgi?article=1000&context=sphhs_policy_ggrchn**
[11] state experienced: **http://www.hhsc.state.tx.us/reports/2015/tx-womens-health-program-rider-44-report.pdf**

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Baby In Undercover Anti-Abortion Video Was Stillborn, Not Aborted, Producer Says

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BY RAY NOTHSTINE , CHRISTIAN POST REPORTER

August 24, 2015 | 4:45 pm

(SCREENGRAB, YOUTUBE / CENTER FOR MEDICAL PROGRESS)

The Center for Medical Progress clarified that in its most recent video the baby depicted is from a stillborn birth, not an abortion, but was used to show viewers what the second trimester babies from whom Planned Parenthood is harvesting organs looks like.

In a second identical uploaded video on Thursday to the CMP YouTube page the organization noted that the image is of Walter Fretz, who was born prematurely at 19 weeks. Much of the video features Holly O'Donnell, a former procurement technician, testifying about late term abortion procedures. A previous uploaded video made no mention of the origin of the infant or its circumstances, causing some to allege the pro-life organization was misleading viewers.

CMP linked to the Daily Mail story that offers the particulars of Fretz's delivery by his mother Alexis Fretz, 30, who held the baby in her arms while surrounded by her family.

In a screen grab captured by Think Progress, a liberal political news blog, they shared a message purportedly from Walter's mother, who says she did not agree with CMP's use of Walter's image.

"Yes, the photo at the end of the newest video about Planned Parenthood is Walter," declares Fretz. "No, they did not ask for permission to use the photo and YES that is illegal. No, I am not going to do anything about it. It is not the first time that Walter's photo's have been used without my / our knowledge.

"We are placing our family and Walter in the hands of the Lord. I can spend countless hours worrying about this and scouring the Internet or I can trust that in all things, God will protect us and His plan is perfect!," Fretz added.

The forum is limited to discussions about the content of an article. Please note that anything you post may be used, along with your name and profile picture, in accordance with our Privacy Policy and the license you have granted pursuant to our Terms of Service.

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MeToo 8:29 AM on August 25, 2015 5 FOLLOWERS MUTE

Lie a little, lie a lot, that's what anti-choice activists do.

REPLY Agree(6) Disagree(0) Report abuse(0)

Moontan 8:29 AM on August 25, 2015 43 FOLLOWERS MUTE

MeToo - Not that pro-death advocates do any lying.

REPLY Agree(0) Disagree(1) Report abuse(0)

MeToo 8:49 AM on August 25, 2015 6 FOLLOWERS MUTE

Moontan - You are correct pro-capital punishment supporters do lie as well.

REPLY Agree(3) Disagree(1) Report abuse(0)

Moontan 8:51 AM on August 25, 2015 43 FOLLOWERS MUTE

MeToo - :-) You're slipping, bro.

REPLY Agree(1) Disagree(0) Report abuse(0)

Bob Wierdsma (Moderator) 3:11 PM on August 25, 2015 39 FOLLOWERS MUTE

MeToo - "Pro-Choicers" also lie about its humanity.

REPLY Agree(0) Disagree(1) Report abuse(0)

MeToo 4:33 PM on August 25, 2015 5 FOLLOWERS MUTE

Bob Wierdsma - What is it with you people and your difficulty with understanding what a lie is. Facts you don't like are not lies. Opinions you do not agree with are not lies. Lies are when you nothing something to be a fact and deliberately choose to say something else.

REPLY Agree(2) Disagree(0) Report abuse(0)

Bob Wierdsma (Moderator) 2:10 PM on August 26, 2015 39 FOLLOWERS MUTE

MeToo - The fact is, is that what we are dealing with is a human being that doesn't have a prayer, when Planned Parenthood or some other clinic gets it hand on them. Pro-choicers are the biggest liars of all but choose to turn a blind eye. Having seen a miscarried baby myself - in person - I know what I am talking about.

REPLY Agree(0) Disagree(1) Report abuse(0)

MeToo 2:34 PM on August 26, 2015 6 FOLLOWERS MUTE

Bob Wierdsma - You have not mentioned a single lie, not one. Calling people liars when they are not lying is bearing false witness.

REPLY Agree(2) Disagree(0) Report abuse(0)

[redacted]

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Anti-abortion video showed stillborn baby — not fetus

By Sarah Ferris - 08/21/15 11:42 AM EDT

Human Capital - Episode 3. Planned Parenthood's Custom Abort.

The anti-abortion-rights group targeting Planned Parenthood is acknowledging that its most recent video used an image of a stillborn baby that was made to look like an aborted fetus.

The Center for Medical Progress posted a new link on its video late Thursday, adding that one of the images was actually a baby named Walter Fretz, born prematurely at 19 weeks.

Planned Parenthood is seizing on the clarification, arguing that it is new proof the videos are deceptively edited in an attempt to take down the organization.

"This fraudulent smear campaign is falling apart on closer inspection," said Eric Ferrero, vice president for communications at Planned Parenthood Federation of America.

"These anti-abortion extremists apparently violated multiple laws to perpetrate this fraud. They weren't documenting wrongdoing — they set out to create wrongdoing and catch it on tape, and when they couldn't even do that, they edited videos to try to mislead and deceive the public."

The image is shown during an interview with an ex-employee of one of Planned Parenthood's partners, who claims that her colleague witnessed a fetus with a beating heart during an abortion.

The photo was actually of the stillborn son of a woman who claimed it in a Facebook post Friday, according to a release by Planned Parenthood. The photo had been published with permission by *The Guardian* last year.

Citing the woman's Facebook post, Planned Parenthood said the photo was used by the Center for Medical Progress "without her permission [and that] she believes it is an illegal use of the image."

David Daleiden, the founder of Center for Medical Progress, argued that the citation was present "from the very beginning."

"We never claimed that was an image of an aborted baby. It's just an illustration of what a baby looks like at the end of the 2nd trimester," he wrote in a statement. "It's interesting that Planned Parenthood and their allies assumed so quickly that's what was happening – are they just grasping at straws, or are their consciences also starting to get to them?"

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"The State of Texas is funding ... women's health services at historically high levels; they just increased their level another $50 million for the next two years."

— Joe Pojman on Tuesday, July 28th, 2015 in addressing a rally outside the Texas Capitol

Anti-abortion leader says Texas funding women's health services at historically high levels

By W. Gardner Selby on Friday, September 4th, 2015 at 5:43 p.m.

Joe Pojman of the Texas Alliance for Life speaks about women's health care funding July 28, 2015, outside the Texas Capitol (Dallas Morning News video).

At a Texas Capitol rally, an anti-abortion advocate suggested Texas has hit a record pace in funding women's health.

Video of the July 2015 rally shows Joe Pojman of the Texas Alliance for Life initially saluting Republican leaders for launching investigations in reaction to stealth videos showing Planned Parenthood employees talking rather casually about donations of fetal tissue. The videos had been circulated by the California-based Center for Medical Progress, which describes itself as a group of citizen-journalists dedicated to monitoring and reporting on medical ethics.

Next, Pojman told the crowd, to cheers and applause: "I just wanted to emphasize, the state of Texas is doing its part... The state of Texas is funding ... women's health services at historically high levels; they just increased that level another $50 million for the next two years." Pojman noted that none of the $50 million would go to Planned Parenthood. "Texas takes care of our people and Planned Parenthood is not part of that picture," he said.

Legislative cuts and changes, 2011-2013

Pojman's declaration caught our attention in part because actions set in motion by the 2011 Legislature drove down family planning spending in the state budget by more than $70 million (from an existing two-year expenditure of $111 million) in 2012-13. Also in 2011, lawmakers voted to bar state family planning aid from going to health care providers affiliated with organizations that perform or promote abortions such as Planned Parenthood, whose clinics had been the Texas program's biggest provider of contraceptive care and cancer screening, serving more than 40,000 women a year.

Two years later, the state's ruling Republicans passed into law a bar on most abortions after 20 weeks of gestation and mandated facilities providing abortions meet tougher health and safety standards, a move under court challenge that has caused providers to predict a substantial reduction in clinics statewide.

After the 2011 actions, the federal government moved to cut off what had been a 9-to-1 match of federal to state dollars paying to provide contraceptive care for women who otherwise would qualify for Medicaid if they were to become pregnant. State health officials said the affected initiative, launched in 2005, had saved the state money—$21.4 million in 2008, for instance—by reducing Medicaid-financed births. Federal aid

accounted for $65 million of the money spent on the program in 2010-11.

Reacting to the pending cutoff, then-Gov. Rick Perry announced state officials would assure such services were delivered through clinics not affiliated with abortion providers. The promised transition fully played out starting in 2013.

So, given all this, could it be the state has set a record for expenditures on women's health?

Pojman's backup cites state budgets

We asked Pojman, executive director of the alliance, which says it opposes the advocacy and practice of abortion (except to preserve the pregnant woman's life), how he reached his "historically high" conclusion.

By email, Pojman responded with a chart, which he sourced to state budgets, indicating that nearly $285 million in state and federal funds budgeted by the 2015 Legislature for several women's health efforts in 2016-17 would exceed such spending in each of the nine previous two-year state budgets, dating to 1998-99—with the previous record being $240.1 million for such programs in 2014-15. The previous low, per the chart, was $128.8 million in 2012-13.

Pojman's chart attributed the touted $50 million in fresh spending to a provision in the 2016-17 budget stating the money should "increase access to women's health and family planning services."

In his email, Pojman told us that at the rally, he was referring to total legislatively appropriated state and federal funding, not per-person funding, on four programs providing family planning or female-specific health care such as breast and cervical cancer screenings. Conversely, he said, he wasn't including funding for perinatal care, including childbirth. "Planned Parenthood," he said, "provides virtually no services for pregnant women, certainly not support for childbirth, except elective abortion."

Four state-overseen efforts

In his email, Pojman said a February 2014 Texas Health and Human Services Commission presentation amounted to a good summary of how the state spends money on women's health. From that, we pulled these thumbnails:

- The Texas Women's Health Program was put in place by the state starting in 2013 to provide services previously available through the defunct, federally supported Medicaid Women's Health Program. The successor program, serving women living at or below 185 percent of the federal poverty level, "retains the same program objectives and client eligibility previously provided by WHP and has expanded program benefits to include treatment of certain sexually transmitted infections." Services offered in annual appointments include pelvic examinations and STD, diabetes, HIV, cholesterol, blood pressure and breast and cervical cancer screenings plus Pap tests, a clinical breast exam, contraceptives and family planning counseling.

- Family planning services, available to women of childbearing age and men living at 250 percent of the poverty level or less, offering the tests offered in the women's health program plus sterilizations.

- Expanded Primary Health Care, a new program, offered to women 18 and older living at or below 200 percent of the poverty level, covering the services offered in the other programs plus immunizations, mammograms, diagnostic services for women with abnormal breast or cervical cancer test results, cervical dysplasia treatment, individualized case management and option prenatal medical and dental services.

- Breast and Cervical Cancer Services, open to women living at or below 200 percent of the poverty level, with breast screenings for women aged 50 to 64 and cervical screenings for women aged 21 to 64. In addition to services covered by the Expanded Primary Health Care program, BCCS assists clients needing to apply to Medicaid's Breast and Cervical Cancer program.

In addition, a chart in the presentation included spending figures that mostly aligned with what Pojman had offered to us for fiscal 2010 through 2015--including the

legislated decrease in 2012-13 and a rebound in spending budgeted for 2014-15 (which ran through August 2015):

Funding for Women's Health Services

	FY 2010-11	FY 2012-13	FY 2014-15
Texas Women's Health	Expended	Estimated	Projected
	$72.3M	$69.2M	$72.4M
Family Planning	$111.2M	$36.4M	$43.2M
Expanded Primary Health Care	--	--	$100M
Breast/cervical Cancer Screening	$17.9M	$21.7M	$24.5M
Total	$201.4M	$127.3M	$240.1M

SOURCE: "Presentation to Senate Committee on Health and Human Services: Texas Women's Health and Family Planning Programs," Feb. 20, 2014 (received by email from Joe Pojman, Aug. 6, 2015)

Other analyses support claim

Next, we asked the commission and outside experts about Pojman's rally statement.

The consensus was that spending budgeted by lawmakers for 2016-17 would set a record, though some advocates cautioned this didn't mean all needs would be met and others said that not all the described programs focus only on services typically provided by family planning clinics.

To our inquiry, the Texas Health and Human Services Commission emailed a more

detailed chart basically lining up with Pojman's recap. From the commission's figures, it looked to us like the appropriated 2016-17 funds for women's health services exceeded previous two-year expenditures by $40 million or more.

At the the Austin-based Center for Public Policy Priorities, which advocates for programs serving low-income residents, analyst Stacey Pogue said Pojman was on solid ground, though it's complicated. For instance, Pogue said, the 2015 Legislature called for three women's health programs to be reorganized in 2016 into two offerings overseen by the commission and precise spending results remain to be seen.

By email, Pogue pointed out a two-page summary of the 2016-17 state budget prepared by the Texas Women's Healthcare Coalition, which says it promotes access to preventive health care for all Texas women "working toward the vision of a state where every woman has access to the preventive and preconception care that will help her stay healthy and prepare for healthy, planned pregnancies." According to this June 2015 summary, $260.9 million in spending on women's health care budgeted by lawmakers for 2016-17 reflected an increase of $46.5 million, or 22 percent, from what was budgeted for 2014-15.

We confirmed the latest figures in the 2016-17 appropriations act approved by a Texas House-Senate conference committee; it shows $130,321,510 in budgeted spending on women's health services in the fiscal year beginning Sept. 1, 2015, and $130,548,682 for the subsequent year, totaling $260,870,192 in the biennium.

As noted by Pojman, the act also says that each year, on approval of the budget board, the commission shall allocate $50 million "providing primary health care services to women" including but not limited to preventive "health screenings such as breast and cervical cancer screenings, diabetes, cholesterol, hypertension and STD-HIV screenings; family planning services including contraception; perinatal services; and dental services." Due to such spending, the act estimates that annually, 65,000 adults and adolescents would receive family planning services.

It's that additional spending, the coalition summary indicates, that makes the budgeted spending higher despite legislated reductions in spending for family

planning (a cut of $1.5 million, or nearly 4 percent) and the Texas Women's Health program (a cut of $2 million, or 3 percent).

Alabama analyst

Also to our inquiry, Heather Busby of NARAL Pro-Choice Texas, which says it focuses on guaranteeing Texans the right to make personal reproductive health decisions including contraception and safe abortions, suggested we query Kari White, a University of Alabama at Birmingham professor and expert on women's health issues who's been part of a Texas-based team studying effects of the Texas decision barring aid to clinics affiliated with abortion providers.

By phone and email, White agreed the state has allocated what looks like a record level of money to the efforts singled out by Pojman though she speculated by email the spending bump might be less dramatic than available figures suggest. "The focus on funding allocated for the four programs on Pojman's list," White said, "does not entirely capture how some of the women's health services historically have been paid for. For example, primary care services for women that are now covered by EPHC were previously paid for using other state-administered and federal programs (not included on Pojman's list). By not factoring these programs into funding totals in previous years, the recent increase may seem larger than it actually is."

Spending per woman

"Also," White wrote, "funding allocations do not reflect how effectively these programs are serving women. In other words, there may be more total dollars set aside for services, but since quite a bit of this new funding has been going to organizations that do not have a lot of experience with family planning, the state is spending more but not necessarily serving more women."

White suggested we consider research by the Guttmacher Institute, a nonprofit that promotes reproductive health and abortion rights. In 2013, more than 1.7 million Texas women "were in need of publicly supported contraceptive services and supplies," according to a July 2015 institute report that started from U.S. Census

Bureau survey results. That year, the report said, publicly supported health centers provided contraceptive care to 281,170 women in Texas plus 47,390 teens. "These totals amount to substantial proportions--but not nearly all--of the women in need of publicly supported contraception," the report said.

For our part, we asked the commission for help estimating the number of Texas women eligible for the health services. Could it be that even with spending up, less money is available per potential beneficiary?

By email, spokesman Bryan Black provided a chart, drawing on U.S. Census Bureau surveys, estimating the number of female U.S. citizens aged 15-44 living in Texas at or below 200 percent of the federal poverty level from 2010 through 2017--in other words, the women who most likely would qualify for the health services. Next, we calculated that some $109 per potential beneficiary was spent in 2010-11 and 2012-13; this was exceeded by the $205 per potential beneficiary appropriated by lawmakers for such programs in 2014-15 and the $236 per potential beneficiary appropriated for 2016-17.

Our ruling

Pojman said the state of Texas "is funding ... women's health services at historically high levels; they just increased their level another $50 million for the next two years."

Texas lawmakers this year voted to appropriate more for women's health services than before--including the $50 million bump.

This includes funding for general health services such as diabetes and cholesterol screenings. It also may be meaningful that programs are under reorganization. Too, lawmakers started putting more money on the table after their actions led the federal government to cut off tens of millions of dollars for reproductive services.

We rate this claim True.

TRUE – The statement is accurate and there's nothing significant missing.

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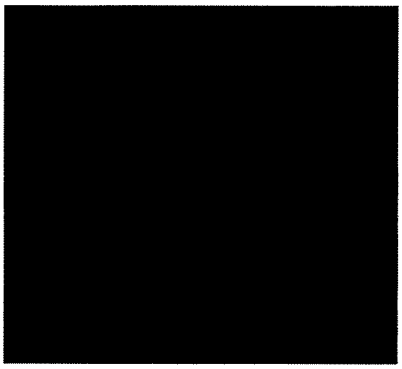

About this statement:

Published: Friday, September 4th, 2015 at 5:43 p.m.

Researched by: W. Gardner Selby

Edited by: John Bridges

Subjects: Abortion, Health Care, State Budget, State Finances, Women

Sources:

Emails including chart showing Texas funding for women's health services, 1998-99 through 2016-17, Joe Pojman, executive director, Texans for Life Alliance, Aug. 6 and Sept. 2, 2015

Austin American-Statesman news stories, "Women's health bill mired in abortion politics," May 4, 2011; "Women's health bill not likely to survive," May 17, 2011; "More cuts for family planning programs," May 24, 2011; "Study questions state's plan," Oct. 12, 2012; "State readies program takeover," Oct. 19, 2012; "Perry: Texas is ready to run health program," posted Oct. 31, 2012

Document, "Summary of Conference Committee Report for House Bill 1, Appropriations for the 2016-17 Biennium," Legislative Budget Board, May 2015

Chart, "Women's Health Funding FY 10-11 to FY 14-15, FY 16-17," Texas Health and Human Services Commission (received by email from Nikkol Camarillo, legal assistant, Open Records, HHSC, Aug. 12, 2015)

Telephone interview and emails, Kari White, Ph.D, MPH, assistant professor, Department of Health Care Organization and Policy, the University of Alabama at Birmingham, Aug. 27-28, 2015

Report and fact sheet, "Contraceptive Needs and Services, 2013 Update," "Facts on Publicly Funded Family Planning Services: Texas," July 2015, the Guttmacher Institute

Telephone interview and email, Stacey Pogue, senior policy analyst, Center for Public Policy Priorities, July 29 and Aug. 3, 2015

Report, "Texas State Government Effectiveness and Efficiency Report Selected Issues and Recommendations," Legislative Budget Board, January 2015

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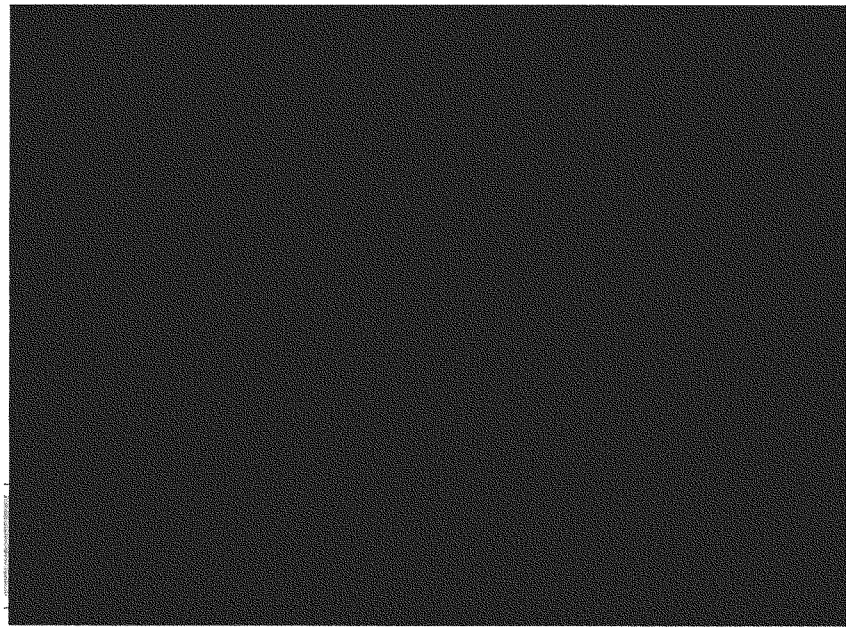

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THE DAILY SIGNAL

If Planned Parenthood Loses Government Funding, Here's a Map of Health Clinics That Could Take Its Place

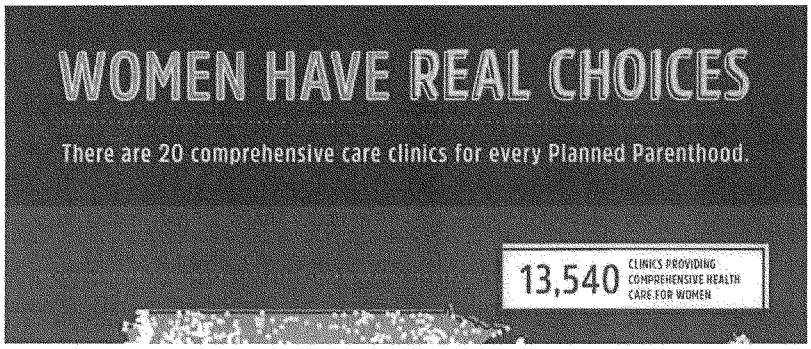
Kelsey Harkness / August 17, 2015

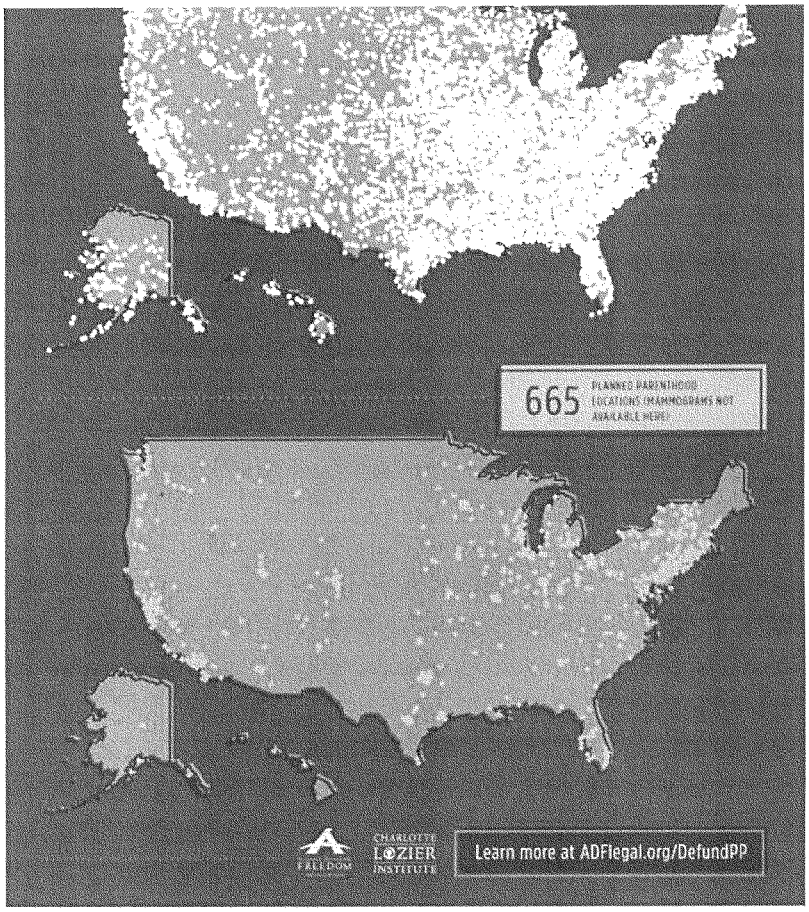
Two leading pro-life organizations released a map today intended to showcase the thousands of community health care clinics that could step in for Planned Parenthood if it were to lose federal funding.

The map adds to a heated conversation about whether stripping Planned Parenthood of its $500 million annual taxpayer dollars would hurt women's health care in America, or if women would be better off without it.

Alliance Defending Freedom and Charlotte Lozier Institute, the education arm of the Susan B. Anthony List, identified the different Planned Parenthood locations and community health care clinics across America.

The two groups argue there are plenty of health centers — that also can receive federal funding — to absorb Planned Parenthood's patients should the organization be defunded by Congress.





"What these graphics put into pictures is what the data has been telling us for a long time," Casey Mattox, a senior counsel at Alliance Defending Freedom who focuses on pro-life issues, told The Daily Signal. "Planned Parenthood is really a small part of the national health care picture in America."

According to data collected by the two groups, there are currently 13,540 clinics providing

comprehensive health care for women, versus 665 Planned Parenthood locations.

Community health centers primarily exist to provide comprehensive care to millions of uninsured, working poor and jobless Americans.

If Planned Parenthood's federal funding "went away tomorrow," Mattox argues, the money "would be better used by community health centers and other places around the country that can provide a fuller range of services to women without the ethical challenges that Planned Parenthood presents."

The effort to defund Planned Parenthood comes after the Center for Medical Progress, a group that opposes abortion, released a series of damaging videos.

The videos show high-ranking Planned Parenthood employees discussing the sale of tissue from aborted babies and changing abortion procedures to harvest these organs.

The issues raise a host of legal questions and have sparked both state and federal investigations.

Some healthcare experts warn that lawmakers should be careful in punishing Planned Parenthood. These supporters argue community health clinics can't fulfill the services that Planned Parenthood provides.

"The notion that you could literally overnight defund providers serving a couple million people and think that health centers—even if they're right nearby, which is not always the case—could just magically absorb patients, I think shows an astounding naiveté in healthcare," says Sara Rosenbaum, a professor of health law and policy at George Washington University.

"You can map all you want and the fact of the matter is health centers are not magicians and health care doesn't work this way."

Rosenbaum, in an interview with The Daily Signal, argued that banning Planned Parenthood funding would create an immediate health care access crisis for millions of women.

Texas, she says, is the "smoking gun" in the debate.

In 2012, Texas stopped funding abortion-providers like Planned Parenthood. Instead, in 2013 it created the Women's Health Program, which provides low-income women with family planning services, health screenings and birth control.

According to a study by George Washington University, this resulted in community clinics increasing their women's health care services by an average of 81 percent.

Between 2011 and 2013, after Planned Parenthood was excluded, the study found that the program experienced a nine percent decrease in enrollees, a 26 percent decrease in Medicaid claims and a 54 percent decline in contraceptive claims.

Eventually, community health care clinics replaced Planned Parenthood's services, Rosenbaum said, but not without consequences.

"Yes, health centers eventually ramped up. Yes, they offer more family planning services than they did before because they had to respond to a crisis and health centers are remarkable at responding to crises. But the state's own data show that the actual number of patients served dropped." She added:

> *We're talking family planning, cancer screenings, things like that. You certainly do not want people who are seeking family planning to have to put it off at all. Otherwise, you wind up with unplanned pregnancies, half of which will turn into an abortion. This is exactly what we don't want so why would you shut down a point of access for contraceptives? And why would you shut down cancer screen sites? It makes no sense.*

Mattox, with Alliance Defending Freedom, argues the Texas example paints an entirely different picture—one that actually appears to be a success story.

According to state data, in 2012, the pregnancy rate in Texas remained relatively the same, falling from 82.2 pregnancies per 1,000 women ages 15-44, to 81.1 in 2013.

Abortions dropped during the same period, from 65,547 in 2012 compared to 61,513 in 2013.

"The data belies the claim that Planned Parenthood was necessary to women's health care in Texas," Mattox said.

In 2013, right after Texas ousted the organization, Planned Parenthood clinics in the state agreed to pay $4.3 million to settle a federal civil suit brought by the Justice Department under President Obama.

The suit claimed the organization fraudulently billed Medicaid for women's health care services such as birth control from 2003 to 2009.

The massive drop in Medicaid and contraceptive claims, Mattox said, "may be evidence that Texas cleaned up a lot of false claims."

In addition, Mattox argued the drop in program enrollees could be attributed to a bump in the economy—with more people enrolling on employer-provided health care plans—and the creation of the Affordable Care Act, which "compelled free coverage of contraceptives."

"It seems some of our friends on the left conveniently forget that they created Obamacare and compelled free coverage of contraceptives when that is inconvenient to defending the need for Planned Parenthood," he said.

Taking in these broader factors, Mattox argued the Texas example "might actually be good news" and further proof that taking away Planned Parenthood won't hurt women.

> *It seems like there may be other factors that explain what happened to women during this time period in Texas. That might actually be good news—we may have solved problems rather than found new ones.*

If Congress defunds Planned Parenthood, the country will have to wait and see if the Texas model will be tested on the national level.

NATIONAL REVIEW

What Texas PolitiFact Won't Admit about the State's Defunding of Planned Parenthood

By Michael J. New — September 16, 2015

This Sunday, Texas Politifact released a review of some statements I made in a recent *Washington Examiner* editorial. In it, I noted that, as the debate over federal funding for Planned Parenthood continues, the experience of Texas has been instructive. After all, public-health data indicate that when Texas defunded Planned Parenthood, both the abortion rate and the unintended-pregnancy rate fell. This is consistent with a broad body of research which shows that funding for contraceptive programs offers little public-health benefit. Later, a *LifeNews.com* reprint of my article was circulated via Twitter by the office of Texas governor Greg Abbott, which came to the attention of Texas PolitiFact. Using extremely tortured and bizarre logic, it rated my claims about the decline in unintended pregnancies and abortions "Mostly False."

Here are the facts: The Texas state legislature voted to remove Planned Parenthood from the state family-planning program in 2011. Because of various legal challenges, these funding cuts were phased in throughout 2012. Between 2011 and 2013, the state abortion rate in Texas fell by over 14 percent. Additionally, according to PolitiFact, preliminary data from the Texas Department of State Health Services indicates the number of abortions in Texas fell by an *additional* 15 percent in 2014. Secondly, between 2011 and 2013 both the pregnancy rate and the birth rate fell in Texas. Based on the data it seems reasonable to assume that the abortion rate and the unintended-pregnancy rate fell after Planned Parenthood was defunded.

All in all, the news is good. Important metrics of public health in Texas have improved. Of course, Texas PolitiFact had to find some way to put a negative spin on the legislature's decision to defund Planned Parenthood. As such, they offer three arguments to try to counter my claims.

First, they point out that the state of Texas does not collect data on unintended

pregnancies. While this is technically true, we can still make reasonable inferences about the unintended-pregnancy rate from both the Texas birth rate and the Texas abortion rate. Since both the abortion rate and the birth rate fell, it is certainly reasonable to argue there was a reduction in the unintended-pregnancy rate. In fact, the only conceivable way the unintended-pregnancy rate could have increased would have been for there to be sharp decrease in the *intended* pregnancy rate, coupled with a simultaneous increase in the percentage of unintended pregnancies carried to term. For obvious reasons, I find that very unlikely.

Second, PolitiFact argues the reductions in both the pregnancy rate and the abortion rate are part of a broad long-term trend. This is a fair point, but there have been countless predictions of doom should efforts on the federal level to defund Planned Parenthood succeed. *Washington Post* columnist Dana Milbank, for example, called the Senate vote to end federal funding to Planned Parenthood "The Abortion Promotion Act of 2015." Terry O'Neil, the President of the National Organization for Women (NOW) said "the claim we can somehow replace Planned Parenthood overnight . . . is silly and specious." Writing for Health Affairs Blog, GWU law professor Sara Rosenbaum stated that "a sudden cutoff in funding would create an immediate health care crisis for millions of women." As such, the fact there has been no public-health crisis in Texas to speak of is both notable and newsworthy.

Third, PolitiFact states that I cannot prove that defunding Planned Parenthood caused the declines in unintended pregnancies and births. However, I never claimed that defunding Planned Parenthood actually caused the declines. I simply noted that the declines took place. Again, these declines in unintended pregnancies and abortion in Texas are important considering the significant amount of criticism directed toward Senate Republicans for their efforts to cut off federal funds to Planned Parenthood.

All of this clearly demonstrates the politicized manner in which PolitiFact evaluates the statements made by conservatives and pro-lifers. After Texas defunded Planned Parenthood, the abortion rate fell, and there's also strong evidence the unintended-pregnancy rate fell. Texas PolitiFact deserves a rating of "Mostly False" for their misleading analysis.

Texas Women's Health Program Provider Survey

Patient Capacity Report

Health and Human Services Commission
Center for Strategic Decision Support

January 7, 2013

TEXAS WOMEN'S HEALTH PROGRAM PROVIDER SURVEY
PATIENT CAPACITY REPORT
JANUARY 2012

INTRODUCTION

The Medicaid Women's Health Program (WHP), administered by the Texas Health and Human Services Commission (HHSC) provides family planning services for low-income women who wouldn't qualify for Medicaid unless they were pregnant. The federal government cut off the funding for the Medicaid Women's Health Program on December 31, 2012, over a state law that excludes organizations that perform or promote elective abortions from the program. Governor Rick Perry directed HHSC to create a new state program to continue family planning services to women previously served by the Medicaid program and HHSC adopted rules on behalf of the Department of State Health Services to implement the new state program in accordance with state law (Senate Bill 7, 82nd Legislature, Regular Session, 2011).

The new state program, the Texas Women's Health Program (TWHP), was launched on January 1, 2013. The administrative rules for the new program exclude elective abortion providers and their affiliates from participation in the program. Traditionally affiliates of Planned Parenthood have provided services to about 40 percent of Medicaid Women's Health Program clients, but those locations did not certify to provide services under the state program and have challenged the new state rules in court. As the federally funded Medicaid Women's Health Program (WHP) ended and the state-funded Texas Women's Health Program was launched, HHSC wanted to verify that the state continued to have the capacity to serve all of the women receiving benefits under the program. Texas Health and Human Services Executive Commissioner Kyle Janek, M.D., asked HHSC's Center for Strategic Decision Support (SDS) to survey certified Texas Women's Health Program providers to assess whether they have capacity to serve all of the Medicaid Women's Health Program clients who previously had seen by Planned Parenthood.

CAPACITY

SDS used Medicaid claims data to determine how much Texas Women's Health Program capacity was needed in areas that previously were served by Planned Parenthood. SDS examined a geographic area of 30 miles around each Planned Parenthood site that provided WHP services in fiscal year 2012. HHSC's provider certification and claims payment vendor, the Texas Medicaid & Healthcare Partnership, provided SDS a list of certified WHP providers as of October 2012. Using this list, SDS:

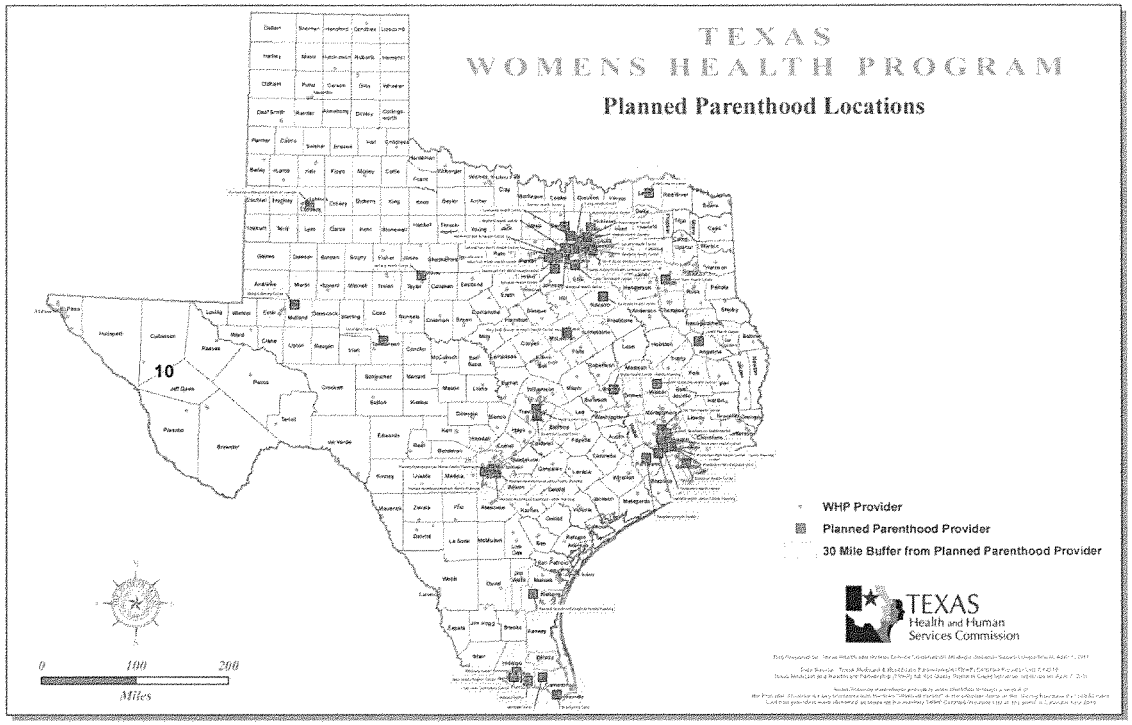
- Used GIS mapping software to create a list of providers that are within 30 miles of each of the 51 Planned Parenthood affiliate clinics that had provided Medicaid Women's

Health Program services.[1] Data for Planned Parenthood clinics in areas where there was significant overlap of the 30 mile radius were grouped together. This created 17 geographic areas (see Figure 1).

- Examined fiscal year 2012 Medicaid claims data for each provider on this list to determine the number of unique Medicaid WHP clients that each provider saw in fiscal year 2012. Providers in the identified areas were sent surveys by mail and email that included the number of Medicaid WHP clients they saw in FY2012. The surveys asked how many Texas Women's Health Program clients they would be able to serve in 2013. SDS followed up with phone calls to attempt to collect the information in cases where providers did not return the surveys by mail or email.

[1] The list of Planned Parenthood clinics was found on the Planned Parenthood website (http://www.plannedparenthood.org/health-center/findCenter.asp) last accessed in October 2012.

Figure 1. Geographic Areas within 30 Miles of a Planned Parenthood Clinic.



PATIENT CAPACITY SURVEY

Data Collection

SDS used a mixed-mode method of survey distribution including email, mail, and telephone. Distribution was batched in that the largest provider groups were contacted first, followed by individual providers and providers with more than 200 unique clients in fiscal year 2012, and lastly smaller provider groups with less than 200 claims. While providers were contacted via email and mail, the main mode of communication with providers was through telephone calls. Once SDS had achieved a sufficient response rate in an area to determine capacity, efforts were refocused to areas where the response rate was lower.

Response Rate

Many providers were contacted multiple times and through various methods. Survey distribution began on November 26, 2012, with an email survey distributed to 415 providers. Data received by January 2, 2013, are included in this report. Table 1 shows the response rate for each of the geographic areas and ranges from 15 percent in Brownsville to 100 percent in Huntsville and Paris. The combined response rate across all geographic areas was 44 percent.

Table 1. Response Rate

Geographic Area	Certified Providers	Number Responded	Percent Responded
Abilene	16	7	44%
Austin	138	78	57%
Brownsville	31	4	13%
Bryan	81	51	63%
Dallas	475	207	44%
Harlingen	34	5	15%
Houston	468	201	43%
Huntsville	22	18	82%
Kingsville	8	6	75%
Lubbock	117	69	59%
Lufkin	17	6	35%
McAllen	118	36	31%
Midland	25	9	36%
Paris	6	2	33%
San Angelo	60	46	77%
San Antonio	332	106	32%
Waco	166	52	31%
Total	**1948**	**851**	**44%**

Capacity Estimates

Providers were asked to estimate how many *unique* Texas Women's Health Program patients they have the capacity to serve in the next 12 months for their annual family planning exams. (The survey excluded auxiliary services such as lab work or anesthesiology). If a provider could not be reached, the individual provider's capacity was estimated by using the number of clients the provider billed for in fiscal year 2012.

Fiscal year 2012 claims for the Planned Parenthood affiliates were used to determine the number of patients potentially needing a new Texas Women's Health Program provider for each geographic area. It is important to note that several Planned Parenthood affiliates group their billing together. Corsicana and Tyler were grouped with Waco, even though they are not within

30 miles, because these Planned Parenthood locations billed together. Also, the Planned Parenthood affiliate in Paris did not have any claims and likely billed through Planned Parenthood of North Texas. Because of these unusual billing practices, SDS cannot accurately estimate the number of Medicaid Women's Health Program clients served by the affiliates in these communities and therefore cannot completely assess the capacity needs in Paris, Waco, Tyler, and Corsicana at this time.

Table 2 provides a summary of the results and includes:

- The number of clients receiving services at the Planned Parenthood clinics in fiscal year 2012.
- The number of clients receiving services at certified providers within 30 miles of the Planned Parenthood affiliates in fiscal year 2012.
- The estimated capacity for responding providers.
- The number of clients non-responding providers saw in fiscal year 2012.
- The total estimated capacity.
- The estimated excess (or deficit) capacity.

Survey Results

In most of the geographic areas, the SDS survey found that capacity exists to serve Texas Women's Health Program clients. Of the 17 geographic areas surveyed, there is only one in which HHSC estimates a need for additional providers (see Table 2). After surveying at least 77 percent of providers in San Angelo, results suggest that additional providers may be needed to care for all of the TWHP clients in this area. Finally, because of Planned Parenthood's unusual billing practices in Paris, Tyler, Corsicana and Waco, SDS is unable to confidently state that the client capacity in these communities are adequate to meet the needs of all clients. However, the high client capacity in Tyler and Waco suggests that there is sufficient capacity in these two cities to serve all TWHP clients. Our analysis indicates a probable need for additional capacity in Corsicana.

The majority of providers contacted who had seen clients in the past indicated they would be able to increase the number of clients they could see in the next year.

Table 2. Capacity Results

Geographic Area	Planned Parenthood Clinics	Planned Parenthood FY 2012 Clients (Billed)	Certified Providers within 30 Miles FY 2012 Clients (Billed)	Estimated Capacity Survey Responses	FY 2012 Capacity for Non-Responders	Total 2013 Estimated Capacity	2013 Excess (Deficit) Capacity
Abilene	1	601	285	5,750	106	5,856	4,970
Austin	2	1,773	3,646	10,145	277	10,422	5,003
Brownsville	1	360	895	3,125	676	3,801	2,546
Bryan	1	773	738	2,139	14	2,153	642
Dallas	18	8,669	10,202	19,896	934	20,830	1,959
Harlingen	1	558	763	9,820	659	10,479	9,158
Houston	9	14,273	11,937	27,497	2,569	30,066	3,856
Huntsville*	1	806	6	2,277	0	2,277	1,465
Kingsville	1	324	1,072	3,030	37	3,067	1,671
Lubbock	1	1,172	811	3,066	105	3,171	1,188
Lufkin	1	880	331	1,852	81	1,933	722
McAllen	4	4,457	1,477	10,043	596	10,639	4,705
Midland	1	602	493	938	213	1,151	56
Paris	1	0	3	100	0	100	97
San Angelo	1	687	260	462	20	482	(465)
San Antonio	4	3,451	5,312	34,382	2,595	36,977	28,214
Waco**	3	1,457	1,053	3,734	375	4,109	1,599
Total	**51**	**40,843**	**39,284**	**138,256**	**9,257**	**147,513**	**67,386**

*There is only capacity to serve a total of 12 WHP patients in the city of Huntsville; however Conroe is within 30 miles and there is capacity to serve 2,265 patients in Conroe.

**Waco includes Tyler, Corsicana, and Waco since these Planned Parenthood clinics billed together.

CONCLUSION

Overall, the Texas Women's Health Program patient capacity survey results are positive. In most areas, the survey found that the state has the capacity to serve even more women in 2013. Capacity was especially robust in the Rio Grande Valley, San Antonio, Houston, Austin and Abilene areas. The survey identified one area, San Angelo, where there is a likely capacity deficit. Because Planned Parenthood employs an unusual practice of combined billings from Waco, Corsicana and Tyler, the state could not perform a detailed analysis for each of those areas. While the capacity for the combined areas is sufficient, the location of providers in those areas suggests that more capacity may be needed in Corsicana.

The results of the capacity survey will allow HHSC to focus its provider recruitment areas for the Texas Women's Health Program on those areas where additional capacity may be needed.

September 17, 2015

Dear Representative,

The National Health Law Program and the National Women's Law Center strongly oppose H.R. 3134, a bill that would wreak havoc on our nation's safety net programs and millions' access to health care across the country. It is no overstatement to say that, if H.R. 3134 were to become law, our country would face a significant public health crisis. Excluding a highly trusted and qualified provider from a network that provides critical preventative health care would do nothing more than harm those who are in need of this health care the most.

H.R. 3134 would mean that millions of low-income individuals in the Medicaid program could lose their ability to access the provider they trust and choose for high quality health care. This conflicts with, and threatens to jeopardize, a longstanding protection for Medicaid enrollees, the "freedom of choice" provision.[1] This provision gives Medicaid recipients the right to choose to receive covered services from any qualified provider. Historically, Congress has singled out family planning for unique protection when it comes to freedom of choice. Freedom of choice is especially critical for receiving family planning services – it guarantees that women, men, and young people have ready access to family planning services they need when they need them, and from a provider they trust. H.R. 3134 attempts to eliminate Medicaid enrollees' ability to visit Planned Parenthood, whether for family planning services or the other critical services Planned Parenthood provides, such as well woman visits, testing and treatment for sexually transmitted infections, and life-saving cancer screenings. The end result could mean that Medicaid beneficiaries lose access to what may be the only source of primary and preventive care they have.

H.R. 3134 would also inflict serious harm on the chronically underfunded Title X program. Planned Parenthood is a critical component of this safety net program, as the health centers serve a disproportionate share of clients in the Title X system. While only comprising 13% of Title X clinics, Planned Parenthood clinics serve 37% of clients.[2] Each Planned Parenthood health care center serves nearly 3,000 patients for birth control services, far more than other clinic types.[3] Taking away Title X funding from Planned Parenthood would leave those who rely on the Title X program without a key provider that they trust and that provides the health care services they need.

Eliminating funding from Planned Parenthood would have a disproportionate impact on women of color. Hispanic and Black women more commonly access family planning or medical services from a Title X-funded clinic.[4] And women of color make up a disproportionate share of

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[1] 42 U.S.C. § 1396a(a)(23) (2015).

[2] Adam Sonfield et al., *Moving Forward: Family Planning in the Era of Health Reform*, GUTTMACHER INST. (2014), at 15, *available at* https://www.guttmacher.org/pubs/family-planning-and-health-reform.pdf.

[3] Jennifer J. Frost et al., *Contraceptive Needs and Services, 2010*, GUTTMACHER INST. (July 2013) at 12, *available at* http://www.guttmacher.org/pubs/win/contraceptive-needs-2010.pdf.

[4] Gladys Martinez et al., *Use of Family Planning and Related Medical Services Among Women Aged 15-44 in the United States: National Survey of Family Growth, 2006-2010*, NAT'L HEALTH STATISTICS REPORT, Sept. 5, 2013, *available at* http://www.cdc.gov/nchs/data/nhsr/nhsr068.pdf.

Medicaid recipients relative to their population.[5] Given that Planned Parenthood serves 36% of all clients who obtain care from the family planning health network,[6] and that women of color often turn to this network for their health care, taking away such a trusted, high-quality health care provider would have inflict particular harm on women of color.

Proponents of H.R. 3134 boldly suggest that individuals would not lose services because other providers will fill in the drastic void that would be left if Planned Parenthood clinics were shut down. Historical evidence and existing gaps in our country's public safety net suggest otherwise. For example, after Texas turned its preventative care and family planning program into a state-funded program in order to exclude Planned Parenthood from its network, 30,000 fewer low-income women received health care.[7] When Indiana defunding forced a Planned Parenthood clinic to shut its doors,[8] it led to an HIV outbreak in the county because there was no other clinic providing HIV education and testing. The suggestion that other providers can and will step up to fill this need defies common sense.

On a closing note, while we focus on the dramatic negative impact that H.R. 3134 would have on millions of lives across our country, it is imperative to place this attack in the context of the many other attacks on women's health. For example, some members of Congress are pushing to completely eliminate or further cripple the Title X program, as reflected in the current appropriations proposals.

Not only would H.R. 3134 mean that millions of women, men, and young people would lose access to birth control, cancer screenings, breast exams, and STI and HIV testing, but it also represents a direct attack by Members of Congress on women's ability to control their own reproductive health.

We strongly urge you to vote no on H.R. 3134, and stand strong in support of the millions who receive high quality health care through the Planned Parenthood health care centers.

Sincerely,

National Health Law Program
National Women's Law Center

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[5] *What the Medicaid Eligibility Expansion Means for Women*, NAT'L WOMEN'S LAW CTR (Nov. 5, 2012), http://www.nwlc.org/resource/what-medicaid-eligibility-expansion-means-women.

[6] Adam Sonfield et al., *Moving Forward: Family Planning in the Era of Health Reform*, GUTTMACHER INST. (2014), at 15, *available at* https://www.guttmacher.org/pubs/family-planning-and-health-reform.pdf.

[7] Brittney Martin, *Report: Thousands Fewer Served Through Women's Health program Since State Takeover*, THE DALLAS MORNING NEWS, Mar. 24, 2015, http://trailblazersblog.dallasnews.com/2015/03/report-thousands-fewer-served-through-womens-health-program-since-state-takeover.html/.

[8] Indiana officials made a similar claim that other clinics would step up and take the place of Planned Parenthood, but as the later events show, this did not happen. *See As Law Cutting Off Funds Is Signed, Indiana Agency Says Every County Has Same Services as Planned Parenthood*, THE AMERICAN INDEPENDENT INSTITUTE, http://www.americanindependent.com/183538/as-law-cutting-off-funds-is-signed-indiana-agency-says-every-county-has-same-services-as-planned-parenthood ("[Indiana's Family and Social Services Administration spokesperson] Barlow said he was confident that all 92 counties in Indiana have clinics offering the services defunded at PPIN such a contraception, pap smears and sexually transmitted disease prevention.").

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

October 20, 2015

Ms. Charmaine Yoest
President and CEO
Americans United for Life
655 15th Street, N.W.
Washington, DC 20005

Dear Ms. Yoest:

Thank you for appearing before the Subcommittee on Health on September 17, 2015, to testify at the hearing entitled "Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on November 3, 2015. Your responses should be mailed to Graham Pittman, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to graham.pittman@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Joseph R. Pitts
Chairman
Subcommittee on Health

cc: The Honorable Gene Green, Ranking Member, Subcommittee on Health

Attachment

The Honorable Joseph R. Pitts
Chairman
Subcommittee on Health
2125 Rayburn House Office
Washington, D.C. 20515-6115

November 5, 2015

Dear Chairman Pitts:

Thank you for your letter of October 20, 2015 transmitting questions posed by Representative Joseph Kennedy, III following my testimony before the Subcommittee on Health submitted on September 17, 2015 at the hearing entitled, "Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law."

The questions submitted by Representative Kennedy are as follows:

Questions that were posed by Rep. Kennedy:

"Given this information [citing a GPS Fusion report stating 'at this point, it is impossible to characterize the extent to which CMP's undisclosed edits and cuts distort the meaning of the encounters the videos purport to document'], do you dispute the findings of the GPS Fusion experts?

Please detail what, if any, forensic or technical analysis your organization has used to verify the truth and authenticity of both the short videos we viewed at today's hearing and the full-length videos available online.

Additionally, please submit a detailed explanation of any legal analysis your organization has conducted as to whether the Center for Medical Progress broke any federal, state, or local laws during the creation of these videos."

My response to these questions follows immediately below:

Regarding the first question posed by Representative Kennedy, I do dispute the findings of the Fusion GPS experts to the extent their "findings" suggest that the videos created and released by the Center for Medical Progress (CMP) are inaccurate or distort in any material way the brutal reality of Planned Parenthood's harvesting and selling of the organs and body parts of aborted infants. In fact, the Fusion GPS report actually confirms the authenticity of the statements made by Planned Parenthood senior level employees and officials that raise probable cause to investigate whether Planned Parenthood's practice of harvesting baby organs in exchange for money was conducted in violation of federal law and under the direction, supervision and coordination of Planned Parenthood Federation of America. According to the Fusion GPS report,

"analysts found no evidence that [Center for Medical Progress (CMP)] inserted dialogue not spoken by Planned Parenthood staff..." (*See* Fusion GPS report, Executive Summary, page 2).

While the Fusion GPS report substantiates the need to investigate Planned Parenthood Federation of America and its affiliates, the report does have an obvious shortcoming which is not included in a subsequent analysis conducted by Coalfire Systems, Inc., which is available online at http://www.adfmedia.org/files/CoalfireCMPvideosReport.pdf .

Fusion GPS conducted its analysis "at the direction of counsel to Planned Parenthood" (*see* Fusion GPS report, Executive Summary, page 2) on August 25, 2015, after the public release of only the first four CMP videos. The report states that its analysis "did not reveal widespread evidence of substantive video manipulation" but identified "cuts, skips, missing tape, and changes in camera angle." (*See* Fusion GPS report, Video Analysis, page 3.)

The subsequent analysis, conducted by Coalfire and released on September 28, 2015 provides a more complete analysis of the CMP videos. The Coalfire report, unlike the Fusion GPS report, did analyze the entire recorded footage and audio for all of the then-released 10 videos.

The Coalfire experts examined the full recorded media files, provided by CMP on a flash drive, "using industry-standard forensic tools and techniques." (*See* Coalfire report, Executive Summary, page 2.) The Coalfire experts found that the recorded media files it reviewed "are authentic and show no evidence of manipulation or editing." (*See* id.)

Importantly, the Coalfire report fills the gaps of the Fusion GPS report, replacing Fusion GPS's speculation with objective analysis. Comparing the recorded media files to the videos that the CMP had already made available *via* YouTube, the Coalfire analysis found the only material eliminated was "non-pertinent" footage, such as bathroom breaks, commuting, and waiting—footage that lacked pertinent conversation:

With regard to the "Full Footage" YouTube videos released by the [Center for Medical Progress], edits made to these videos were applied to eliminate non-pertinent footage, including "commuting," "waiting," "adjusting recording equipment," "meals," or "restroom breaks," lacking pertinent conversation. Any discrepancies in the chronology of the timecodes are consistent with the intentional removal of this non-pertinent footage as described in this report.

(*See* Coalfire report, Executive Summary, page 2).

In other words, the footage that Planned Parenthood commissioned Fusion GPS report did not analyze – leading it to conclude in August that "at this point" it was unable to determine what those cuts, skips, and missing tape contained – was in fact "non-pertinent footage." Bathroom breaks, waiting, commuting—non-pertinent footage—would not, as speculated in the Fusion GPS report, "distort the meaning of the encounters the videos purport to document."

While it should be pointed out that there is biased editorializing and speculation contained in the Fusion GPS report, none of the extraneous commentary contained therein changes the pertinent facts and the necessity of a thorough investigation.

For example, in its analysis of the video recorded at a Planned Parenthood facility in Colorado, Fusion GPS notes that "Planned Parenthood representatives asked Fusion GPS to analyze" a statement that a baby it had aborted was "another boy," because Planned Parenthood had "deemed" this comment "to be suspicious." (*See* Fusion GPS report, page 5). The Fusion GPS experts found "it is unlikely that this dialog was edited in." (*See* id at page 6). In their report, however, the Fusion GPS experts gratuitously speculate that "it is thus likely that the removed video contains dialog in which CMP operatives ask about the gender of a specimen." (*See* id.)

Prompted or not, a comment about the sex of the baby Planned Parenthood aborted is entirely irrelevant to the serious question of whether Planned Parenthood violates federal laws. A baby—boy or girl—is a person, entitled to rights under federal law when he or she survives an abortion and is born alive at any stage of development. It is illegal to kill a baby—boy or girl—by partial-birth abortion, when he or she is mere inches from birth. The clear standard set out in federal law is that it is illegal and unethical to alter an abortion to harvest the organs of a baby—boy or girl. It is a felony to receive valuable consideration for the organs of an aborted baby—boy or girl.

Regarding the second question posed by Representative Kennedy, Americans United for Life has not conducted an additional independent forensic or technical analysis; both the analyses of Fusion GPS and Coalfire confirm the authenticity of the statements made by Planned Parenthood's senior level employees that raise probable cause to investigate Planned Parenthood Federation of America and its affiliates.

Moreover, while Planned Parenthood has attempted to misdirect, it has not denied the incriminating statements that were spoken by its senior-level employees and officials. Planned Parenthood Federation of America has admitted that it has affiliates engaged in harvesting the organs of the babies they abort in exchange for money. Planned Parenthood Federation of America has admitted that its "guidance" to affiliates regarding altering abortions in order to harvest baby organs is incongruent with the clear standard in federal law. Planned Parenthood's response to the CMP videos confirms the need for a complete and thorough investigation into whether the law has been violated and whether the law is adequate to guard against the unethical, unconscionable acts that have shocked the conscience of the nation.

Finally, regarding the third question posed by Representative Kennedy, Americans United for Life did not conduct an independent investigation of CMP and did not perform a legal analysis as to whether CMP broke any federal, state, or local laws during the creation of its undercover videos. In point of fact, an examination of CMP's practices is irrelevant to the question of the authenticity of the known incriminating statements made by Planned Parenthood's senior level employees and officials that raise probable cause to investigate Planned Parenthood Federation of America and its affiliates for violating federal laws. As noted above, the authenticity of these incriminating statements has already been confirmed by both the Fusion GPS and Coalfire reports.

Chairman Pitts, I hope these responses are helpful to you and the members of the Subcommittee on Health. Please let me know if you have any questions or if I can be of further assistance.

Thank you,

Charmaine Yoest, Ph. D
President & CEO

FRED UPTON, MICHIGAN
CHAIRMAN

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RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

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Minority (202) 225–3641

October 20, 2015

Ms. Judy Waxman
Attorney at Law
2913 Cathedral Avenue, N.W.
Washington, DC 20008

Dear Ms. Waxman:

Thank you for appearing before the Subcommittee on Health on September 17, 2015, to testify at the hearing entitled "Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on November 3, 2015. Your responses should be mailed to Graham Pittman, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to graham.pittman@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Joseph R. Pitts
Chairman
Subcommittee on Health

cc: The Honorable Gene Green, Ranking Member, Subcommittee on Health

Attachment

Graham Pittman
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Judy Waxman's Response to Additional Questions for the Record Following the September 17, 2015 hearing entitled "Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law."

Question 1:
The Honorable Joseph R. Pitts
In the majority opinion upholding the Partial-Birth Abortion Ban Act in 2007 Justice Kennedy quoted from the testimony of a nurse who witnessed this partial-birth method of abortion for killing a 26 week old unborn child.

" 'Dr. Haskell went in with forceps and grabbed the baby's legs and pulled them down into the birth canal. Then he delivered the baby's body and the arms—everything but the head. The doctor kept the head right inside the uterus...

" 'The baby's little fingers were clasping and unclasping, and his little feet were kicking. Then the doctor stuck the scissors in the back of his head, and the baby's arms jerked out, like a startle reaction, like a flinch, like a baby does when he thinks he is going to fall.

" 'The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby's brains out. Now the baby went completely limp... .

" 'He cut the umbilical cord and delivered the placenta. He threw the baby in a pan, along with the placenta and the instruments he had just used.' "

Do you believe that the procedure described here, partial-birth abortion, should be legal? If yes, do you believe this procedure is humane?

A: The dissent in this case, written by Justice Ginsburg and joined by Justice Stevens, Justice Souter and Justice Breyer, stated:

> "Today's decision is alarming... It tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists (ACOG). ...And, for the first time since Roe, the Court blesses a prohibition with no exception safeguarding a woman's health." 127 S. Ct. 1610, 1641 (2007).

I agree with this dissent. I believe it is critical and humane to protect a woman's health and therefore the procedure should be legal.

Question 2:
The Honorable Joseph R. Pitts
In the decision upholding the partial-birth abortion ban act Justice Kennedy noted,

"The evidence also supports a legislative determination that an intact delivery is almost always a conscious choice rather than a happenstance. Doctors, for example, may remove the fetus in a manner that will increase the chances of an intact delivery....Many doctors who testified on behalf of respondents, and who objected to the Act, do not perform an intact D&E by accident. On the contrary, they begin every D&E abortion with the objective of removing the fetus as intact as possible."

In the first video released by CMP Dr. Nucatola described the factor of intent as playing an important role in an abortionists' use of abortion method. She said "...the Federal Abortion Ban is a law and laws are up to interpretation. So there are some people who interpret it as intent. So if I say on Day 1 I do not intend to do this, what ultimately happens doesn't matter. Because I didn't intend to do this on Day 1 so I'm complying with the law."

As an attorney, do you believe Dr. Nucatola's reliance on 'intent' represents a valid legal approach?

A: The "intent standard" comes from the Partial-birth Abortion Ban Act of 2003 which was introduced by then Senator Rick Santorum (R-PA) This law, 18 U.S.C. Section 1531 (a), defines a partial birth abortion "as an abortion in which a physician deliberately and *intentionally* vaginally delivers a living fetus..." (emphasis added)

Question 3:
The Honorable Joseph R. Pitts
More than 9,000 Medicaid providers have been terminated by federal and state authorities in the past two decades for ethical, professional and competency reasons. Many have been terminated for failing to pay their school loans. Do you agree that the laws requiring health care professionals and other vocations to report child sexual abuse are good public policy and help prevent abuse? Additionally, do you agree that a health care professional failing to report sexual abuse of a minor is a serious issue? Do you agree that Planned Parenthood provider or any provider caught failing to report child sexual abuse should be terminated as a Medicaid provider?

A: All mandatory reporters, as defined by state law, should report child sex abuses cases as required by state and federal law. Any remedy required by the law should be applied to all mandatory reporters in the same manner, consistent with all procedures required by law.

Question 4:
The Honorable Joseph R. Pitts
Do you agree with the law that a Medicaid provider who has willfully overbilled the government for services or medications may be disqualified as provider? There are

44 state and federal Government audits of Planned Parenthood Medicaid billing practices that indicate overpayments to Planned Parenthood of at least $8 million. Given that hundreds of other Medicaid providers have been terminated for fraudulent and abusive billing practices, would you agree with me that if Planned Parenthood was shown to have overbilled taxpayer millions of dollars, then that should be grounds for terminating PP as a Medicaid provider?

A: Fraudulent billing practices should result in the remedies required by law to be applied to all providers found in violation in the same manner, consistent with all procedures required by law.

Question 5:
The Honorable Joseph R. Pitts
You are aware that in a letter to Congress dated August 27, 2015 Cecile Richards acknowledged that PP clinics were receiving $60 per specimen for baby body parts, correct? Are you aware of any attempt by Planned Parenthood or an affiliate to explain how it determined this amount reflects its actual costs for "transportation, packaging, storage or any other expenses associated with the procurement of these organs?"

A: I do not have sufficient information to answer this question.

Question 6:
The Honorable Joseph R. Pitts
In your testimony, a central assumption you seem to make is that current Medicaid law only permits suspension or termination following a felony conviction of a Medicaid provider. Do you disagree that federal circuit court decisions construing Medicaid law, together with statutes and regulations, form the body of law states and federal governments should follow when determining the rights of Medicaid providers?

A: Federal and state statutes and regulations determine the rights of Medicaid providers. Judicial decisions only apply within the jurisdiction of the court.

Question 7:
The Honorable Joseph R. Pitts
The Ninth Circuit in a 2009 decision, *Guzman v. Shewry*,[1] held, "The Medicaid statutes contain no explicit preemption language limiting the grounds upon which a state may suspend a provider from a state health care program" and that "nothing in the federal Medicaid statutes or regulations prevents a state from suspending a provider temporarily from a state health care program on the basis of an ongoing investigation for fraud or abuse."

So isn't it a fact that, under current law, states have the power to suspend a provider, pending an investigation, without a felony conviction? After all, isn't the point of an investigation is that the investigator may have a suspicion of wrongdoing

[1] 552 F.3d 941, 949(2009).

and wants to investigate the subject to gather more facts and either confirm its initial suspicion of wrongdoing, or conclude there is insufficient evidence of wrongdoing?

A: States must follow current law with respect to mandatory and permissible exclusions after a determination of wrongdoing in accordance with 42 U.S.C. § 1396a(p). It should be noted that the *Guzman* case was an extraordinary situation where the defendant's actions put his patients' safety at risk.

Question 8:
The Honorable Joseph R. Pitts
Q: If contraception is so inexpensive and widespread as you claim in your writing, why do you oppose religious liberty protections for employers regarding contraception choices?

A: Ninety-nine percent of sexually active women in this country have used contraception at some point in their lives. The Affordable Care Act guarantees that women who have private health insurance are have comprehensive coverage of the contraceptive method that works for each of them. I believe that employees should not be denied this guarantee of coverage because of the employer's religious beliefs.