

House Select Investigative Panel on Infant Lives

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| Footnote | Citation | Bates number |
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| 1 | H. Res. 461, 114th Cong. § 3(a) (2015). | 000001-000004 |
| 2 | 139 Cong. Rec. 4653 (1993) (statement of Rep. John Edward Porter). | 000005-000008 |
| 3 | 139 Cong. Rec. 4615 (1993) (statement of Rep. Connie Morella). | <i>Id.</i> |
| 4 | 139 Cong. Rec. 4686 (1993) (statement of Rep. Henry Waxman). | <i>Id.</i> |
| 5 | H.R. Rep. No. 103-28, at 76 (1993). | 000009-000010 |
| 6 | Pub. L. No. 98-507, 98 Stat. 2339 (1984). | 000011-000020 |
| 7 | H.R. Rep. No. 103-28, at 76 (1993). | Supra 5 |
| 8 | Letter from Rep. Marsha Blackburn, Chairman, House Select Investigative Panel, to Cate Dyer, Founder and CEO, StemExpress, LLC (Dec. 17, 2015). | 000021-000023 |
| 9 | “StemExpress First Response to House Select Panel Document Requests,” [STEM.HOUSE.SELECT_0227]. | 000024 |
| 10 | “StemExpress First Response to House Select Panel Document Requests,” [STEM.HOUSE.SELECT_0228]. | 000025 |
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| 13 | House Select Investigative Panel Staff analysis of STEM.HOUSE.SELECT_0915, STEM.HOUSE.SELECT_1414, STEM.HOUSE.SELECT_1647, STEM.HOUSE.SELECT_0795. | 000028-00031 |
| 14 | Email from House Select Investigative Panel Staff to Amandeep S. Sidhu, McDermott Will & Emery (Jan. 8, 2016). | 000032-000034 |

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| 15 | House Select Investigative Panel Staff, “Handling of Human Fetal Tissue Planning, Analysis & Reporting;” House Select Investigative Panel Staff analysis of STEM.HOUSE.SELECT_0915, STEM.HOUSE.SELECT_1414, STEM.HOUSE.SELECT_1647, STEM.HOUSE.SELECT_0795. | 000035-000038; supra 13 |
| 16 | <i>See</i> Subpoena to StemExpress, LLC (Feb. 12, 2016); Subpoena to StemExpress LLC (Mar. 29, 2016) | 000039-000053 |
| 17 | <i>See</i> Subpoena to Cate Dyer (Mar. 29, 2016) [hereinafter Dyer subpoena]. | 000054-000060 |
| 18 | <i>See</i> Subpoena to Scinto Group, LLP (Apr. 29, 2016). | 000061-000068 |
| 19 | This Report does not recommend holding StemExpress in contempt related to the Panel’s March 29, 2016, subpoena to StemExpress but lists its partial compliance as part of a pattern of noncompliance. | |
| 20 | <i>See</i> email from Kevin Murphy, counsel for Scinto Group LLP, to House Select Investigative Panel staff (Jun. 15, 2016) | 000069-000070 |
| 21 | <i>See</i> T. March Bell, Chief Counsel and Staff Director, House Select Investigative Panel, to Kevin Murphy, counsel for Scinto Group, LLP (Sept. 8, 2016). [hereinafter Scinto Sept. 8] | 000071-000073 |
| 22 | <i>See</i> Letter from Kevin Murphy, counsel for Scinto Group, LLP, to T. March Bell, Chief Counsel and Staff Director, House Select Investigative Panel (Sept. 16, 2016) [hereinafter Scinto Sept. 16] | 000074-000076 |
| 23 | “StemExpress First Response to House Select Panel’s March 29, 2016 Subpoena,” at 2-3. | 000077-000079 |
| 24 | Subpoena to Cate Dyer (Mar. 29, 2016). | Supra 17 |
| 25 | “StemExpress First Response to House Select Panel’s March 29, 2016 Subpoena,” at 1-2. | Supra 23 |
| 26 | Scinto Sept. 16. | Supra 22 |
| 27 | Memorandum from House Select Investigative Panel Counsel to Majority Members of the House Select Investigative Panel, Mar. 7, 2016. | 000080-000081 |
| 28 | <i>See</i> “Stem Express [sic] Initial Analysis / Review of Financial Records Received as of 6/13/16,” | 000082-000085 |

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| | “Handling of Human Fetal Tissue Planning, Analysis & Reporting,” and “Status of Response to Record Requests from Top 5 Procurement Businesses.” | |
| 29 | Email from House Select Investigative Panel Staff to Stephen Ryan and Amandeep S. Sidhu, McDermott Will & Emery (Mar. 18, 2016). | 000086-000088 |
| 30 | Teleconference between House Select Investigative Panel Staff and Stephen M. Ryan and Amandeep S. Sidhu, McDermott Will & Emery (Mar. 14, 2016). | |
| 31 | Email from Stephen Ryan, McDermott Will & Emery, to House Select Investigative Panel Staff (Mar. 18, 2016). | 000089-000091 |
| 32 | Email from Amandeep S. Sidhu, McDermott Will & Emery, to House Select Investigative Panel Staff (Aug. 23, 2016). | 000092 |
| 33 | <i>Id.</i> | |
| 34 | Letter from Rep. Marsha Blackburn, Chairman, House Select Investigative Panel, to Frank Radoslovich, counsel for StemExpress (Sept. 8, 2016). | 000093-00096 |
| 35 | <i>Id.</i> at 4. | |
| 36 | <i>Id.</i> | |
| 37 | Letter from Rep. Marsha Blackburn, Chairman, House Select Investigative Panel, to Cate Dyer, at Appendix A. [hereinafter Dyer letter]. | 000097-000111 |
| 38 | <i>Id.</i> | |
| 39 | <i>See</i> Letter from Amandeep S. Sidhu, McDermott Will & Emery, to Rep. Marsha Blackburn, Chairman, House Select Investigative Panel (May 6, 2016). | 000112-000149 |
| 40 | <i>See Eastland v. United States Serviceman’s Fund</i> , 421 U.S. 491, 504 n.15 (1975) <i>Barenblatt v. United States</i> , 360 U.S. 109, 111 (1959) | 000150-00154 |
| 41 | <i>Watkins v. United States</i> , 354 U.S. 178, 187 (1957). | 000155-00156 |
| 42 | <i>McGrain v. Daugherty</i> , 273 U.S. 135, 161, 174 (1927). | 000157-00160 |
| 43 | <i>See</i> House rule X, clause 1(f); House rule X1, clause 2(m)(1). | 000161-000179 |

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| 44 | House Committee on Energy and Commerce rule 16. | 000180-00190 |
| 45 | <i>Id.</i> | |
| 46 | H. Res. 461, 114th Cong. (2015). | Supra 1 |
| 47 | <i>Id.</i> | |
| 48 | House rule XI, clause 2(m)(1); House rule XI, clause 2(m)(1)(B). | Supra 43 |
| 49 | <i>Watkins</i> , 354 U.S. at 187-88; <i>Hutchison v. United States</i> , 369 U.S. 599, 617 (1962). <i>See also United States v. Bryan</i> , 339 U.S. 323 (1950). | Supra 41; 000191-000204 |
| 50 | <i>See</i> Letter from Rep. Marsha Blackburn, Chairman, House Select Investigative Panel, to Cate Dyer, Founder and CEO, StemExpress, LLC (Dec. 17, 2015). | Supra 8 |
| 51 | “StemExpress Second Response to Senate Judiciary Committee,” [STEM.JUD00000024; STEM.HOUSE SELECT 0057]. | 000205-000206 |
| 52 | “StemExpress First Response to House Select Panel Document Requests” (Jan. 15, 2016) at 1. | Supra 9 |
| 53 | <i>Id.</i> at 2. | |
| 54 | <i>Id.</i> at 4. | |
| 55 | <i>Id.</i> at 6. | |
| 56 | Subpoena to StemExpress, LLP, (Feb. 12, 2016). | Supra 16 |
| 57 | Email from Panel Staff to Amandeep S. Sidhu, McDermott Will & Emery (Feb. 16, 2016). | 000207-000208 |
| 58 | Subpoena to StemExpress, LLP (Feb. 12, 2016), Schedule Item 2. | Supra 16 |
| 59 | Subpoena to StemExpress, LLC (Feb. 12, 2016), Schedule Item 3. | Supra 16 |
| 60 | <i>Id.</i> at Schedule Item 6. | |
| 61 | <i>Id.</i> at Schedule Item 9. | |
| 62 | <i>Id.</i> at Schedule Item 8. | |
| 63 | <i>Id.</i> at Schedule Item 11; <i>Id.</i> at Definition 3; <i>Id.</i> at Definition 1. | |
| 64 | <i>See</i> H. Res. 461, 114th Cong., § 3(a)(1) (2015). | Supra 1 |
| 65 | Subpoena to StemExpress, LLC (Feb. 12, 2016), Schedule Item 11. | Supra 16 |

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| 66 | <i>See</i> H. Res. 461, 114th Cong., §§ 3(a)(1), (2), (6). | Supra 1 |
| 67 | <i>See</i> Subpoena to StemExpress, LLC (Feb. 12, 2016), Schedule Items 8, 9, 11. | Supra 16 |
| 68 | Teleconference between Panel Staff and Stephen M. Ryan and Amandeep S. Sidhu, McDermott Will & Emery (Mar. 14, 2016). | |
| 69 | House Select Investigative Panel Staff analysis of STEM.HOUSE.SELECT_0915, STEM.HOUSE.SELECT_1414, STEM.HOUSE.SELECT_1647, STEM.HOUSE.SELECT_0795. | |
| 70 | <i>Id.</i> | |
| 71 | StemExpress Third Response to House Select Investigative Panel Subpoena, at 3. | 000209-000215 |
| 72 | <i>Id.</i> | |
| 73 | Teleconference between Panel Staff and Stephen M. Ryan and Amandeep S. Sidhu, McDermott Will & Emery (Mar. 14, 2016). Letter from T. March Bell, Chief Counsel and Staff Director, House Select Investigative Panel, to Neil F. Quinter, Brownstein Hyatt Farber Schreck (July 20, 2016), at 1. Samantha Lachman, <i>Democrats Compare GOP Probe of Medical Organizations to McCarthyism</i> , Mar. 2, 2016, online at http://www.huffingtonpost.com/entry/republicans-fetal-tissue-research_us_56d71ddee4b0871f60ed7512 . | |
| 74 | “StemExpress Third Response to House Select Investigative Panel Subpoena,” [STEM.HOUSE.SELECT_0668]. | Supra 71 |
| 75 | <i>See</i> Letter from Amandeep S. Sidhu, McDermott Will & Emery, to T. March Bell, Chief Counsel and Staff Director, House Select Investigative Panel (Mar. 18, 2016), at 1 (emphasis in original); Letter from Amandeep S. Sidhu, McDermott Will & Emery, to Rep. Blackburn, Chairman, House Select Investigative Panel (May 6, 2016), at 2. | 000216-000218 supra 39 |
| 76 | <i>Id.</i> | |
| 77 | <i>Id.</i> | |
| 78 | Dyer letter, at 2-4. | Supra 8 |

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| 79 | Subpoena to StemExpress, LLC (Feb. 12, 2016), Definition 13. | Supra 16 |
| 80 | Dyer letter, at 4. | Supra 8 |
| 81 | Letter from Amandeep S. Sidhu, McDermott Will & Emery, to Chairman Blackburn (May 6, 2016), at 5. (emphasis in original). | Supra 39 |
| 82 | <i>Id.</i> at 6. | |
| 83 | Dyer letter, at 6. | Supra 8 |
| 84 | Dyer letter, at Appendix A. | |
| 85 | <i>See</i> Dyer subpoena, Schedule Item 1. The Panel issued two subpoenas on March 29. | Supra 17 |
| 86 | <i>See</i> Dyer subpoena Schedule. | Supra 17 |
| 87 | STEM.HOUSE.SELECT_0715 | |
| 88 | <i>The Pricing of Fetal Tissue: Hearing before the Select Investigative Panel of the H. Comm. on Energy and Commerce</i> , 114th Cong. (Apr. 20, 2016) [hereinafter <i>Pricing of Fetal Tissue</i>]. | 000219-000227 |
| 89 | <i>See</i> Subpoena to Scinto Group, LLP (Apr. 29, 2016). | Supra 18 |
| 90 | Letter from Kevin M. Murphy, Carr Maloney, to T. March Bell, Chief Counsel and Staff Director, House Select Investigative Panel (Jun. 28, 2016) [hereinafter <i>Murphy Jun. 28 letter</i>], at 2, 3-4. | 000228-000231 |
| 91 | Letter from T. March Bell, Chief Counsel and Staff Director, House Select Investigative Panel, to Kevin M. Murphy, Carr Maloney (Sept. 8, 2016). | Supra 21 |
| 92 | Email from Kevin M. Murphy to House Select Investigative Panel Staff (May 26, 2016). | 000232-000234 |
| 93 | Email from House Select Investigative Panel Staff to Kevin M. Murphy, Carr Maloney (May 26, 2016). | Supra 92 |
| 94 | <i>Murphy Jun. 28 letter</i> , at 2. | Supra 90 |
| 95 | <i>Id.</i> at 1. | |
| 96 | <i>See</i> Subpoena to StemExpress, LLC (Feb. 12, 2016). | Supra 16 |
| 97 | “StemExpress First Response to House Select Panel’s March 29, 2016 Subpoenas” (Apr. 11, 2016), at 1. | Supra 23 |

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| 98 | <i>Id.</i> | |
| 99 | <i>Id.</i> at 3. | |
| 100 | Subpoena to Scinto Group, LLP (Apr. 29, 2016) | Supra 18 |
| 101 | <i>See</i> Murphy Jun. 28 letter, at 2. | Supra 90 |
| 102 | <i>See, e.g., F.T.C. v. Owens-Corning Fiberglass Corp.</i> , 626 F.2d 966, 970 (D.C. Cir. 1980); <i>Exxon Corp. v. F.T.C.</i> , 589 F.2d 582, 585-86 (D.C. Cir. 1978); <i>Ashland Oil, Inc. v. F.T.C.</i> , 548 F.2d 977, 979 (D.C. Cir. 1976) (per curiam). <i>Owens-Corning Fiberglass Corp.</i> , 626 F.2d 966, 970 (quoting <i>Exxon Corp.</i> , 589 F.2d at 589); <i>See also Jaymar-Ruby, Inc. v. F.T.C.</i> , 496 F. Supp. 838, 845 (N.D. Ind. 1980) | 000235-000243 |
| 103 | <i>See</i> Todd Garvey and Alissa M. Dolan, Cong. Res. Service, Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure 4 (2014). | |
| 104 | <i>Id.</i> at 4-30, 40-50. | |
| 105 | <i>Id.</i> at 4-5. | |
| 106 | <i>Id.</i> at 18. | |
| 107 | 2 U.S.C. § 192. As a result of congressional classification of offenses, the penalty for contempt of Congress is a Class A misdemeanor; thus, the \$1,000 maximum fine under § 192 has been increased to \$100,000. <i>See</i> 18 U.S.C. §§ 3559, 3571. | 000244-000249 |
| 108 | 2 U.S.C. § 194. | 000250-000251 |
| 109 | <i>Id.</i> | |

H. Res. 461

In the House of Representatives, U. S.,

October 7, 2015.

Resolved, That there is hereby established a Select Investigative Panel of the Committee on Energy and Commerce (hereinafter “select panel”).

SEC. 2. (a) The select panel shall be composed of not more than 14 Members, Delegates, or the Resident Commissioner appointed by the Speaker, of whom not more than six shall be appointed on the recommendation of the minority leader. Any vacancy in the select panel shall be filled in the same manner as the original appointment.

(b) Each member appointed to the select panel shall be treated as though a member of the Committee on Energy and Commerce for purposes of the select panel.

(c) No member may serve on the select panel in an ex officio capacity.

(d) The Speaker shall designate as chair of the select panel a member elected to the Committee on Energy and Commerce.

SEC. 3. (a) The select panel is authorized and directed to conduct a full and complete investigation and study and issue a final report of its findings (and such interim reports as it may deem necessary) regarding—

(1) medical procedures and business practices used by entities involved in fetal tissue procurement;

(2) any other relevant matters with respect to fetal tissue procurement;

(3) Federal funding and support for abortion providers;

(4) the practices of providers of second and third trimester abortions, including partial birth abortion and procedures that may lead to a child born alive as a result of an attempted abortion;

(5) medical procedures for the care of a child born alive as a result of an attempted abortion; and

(6) any changes in law or regulation necessary as a result of any findings made under this subsection.

(b) The chair of the Committee on Energy and Commerce shall cause any such report to be printed and made publicly available in electronic form.

SEC. 4. Rule XI and the rules of the Committee on Energy and Commerce shall apply to the select panel in the same manner as a subcommittee except as follows:

(1) The chair of the select panel, consistent with the notification, consultation, and reporting requirements of rule 16 of the rules of the Committee on Energy and Commerce, may authorize and issue subpoenas pursuant to clause 2(m) of rule XI in the investigation and study conducted pursuant to section 3, including for the purpose of taking depositions.

(2) The chair of the select panel, upon consultation with the ranking minority member, may order the taking of depositions, under oath and pursuant to notice or subpoena, by a member of the select panel or a counsel of the select panel. Such depositions shall be governed by the regulations issued by the chair of the Committee on Rules pursuant to section 3(b)(2) of House Resolution 5, One Hundred Fourteenth Congress, and printed in the Congressional Record. The select panel shall be deemed to be a committee for purposes of such regulations.

(3) The chair of the select panel may, after consultation with the ranking minority member, recognize—

(A) members of the select panel to question a witness for periods longer than five minutes as though pursuant to clause 2(j)(2)(B) of rule XI; and

(B) staff of the select panel to question a witness as though pursuant to clause 2(j)(2)(C) of rule XI.

SEC. 5. Service on the select panel shall not count against the limitations in clause 5(b)(2)(A) of rule X.

SEC. 6. The select panel shall cease to exist 30 days after filing the final report required under section 3.

Attest:

Clerk.



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CONGRESSIONAL RECORD -- HOUSE

103rd Congress, 1st Session

139 Cong Rec H 1099

NATIONAL INSTITUTES OF HEALTH REVITALIZATION ACT OF 1993

March 10, 1993

REFERENCE: Vol. 139, No. 29

SECTION: House

SPEAKER: Mr. WAXMAN; Mr. BLILEY; Mr. RICHARDSON; Mr. INGLIS of South Carolina; Mr. BROWN of Ohio; Mr. BILIRAKIS; Mr. SANDERS; Mr. MOORHEAD; Mr. ACKERMAN; Mr. UPTON; Mrs. MORELLA; Mr. SMITH of New Jersey; Ms. DeLAURO; Mr. COYNE; Mr. EMERSON; Ms. PELOSI; Mrs. MALONEY; Mr. BARTLETT of Maryland; Ms. NORTON; Mrs. JOHNSON of Connecticut; Mrs. LLOYD; Mr. DORNAN; Mrs. VUCANOVICH; Mr. BRYANT; Ms. WOOLSEY; Ms. SNOWE; Mr. HOYER; Ms. VELAZQUEZ; Mr. VENTO; Mrs. MINK; Mr. DINGELL; Ms. ESHOO; Mrs. MEEK; Ms. HARMAN; Mr. KING; Mr. STEARNS; Mr. HYDE; Mr. GLICKMAN; Mr. WAXMAN adds provisions which further strengthen protections by requiring that abortions must be done in accordance with State law; Mr. HOEKSTRA; Ms. SCHENK; Mrs. SCHROEDER; Mr. HASTERT; Mr. BEREUTER; Mr. SARPALIUS and Mr. Mr. GILMAN; Mr. TRAFICANT; Mr. SAM JOHNSON of Texas; Mr. McDERMOTT; Mr. CALLAHAN; Mr. BARTON of Texas; Mr. DUNCAN

TEXT: [*1099]

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The SPEAKER pro tempore. Pursuant to House Resolution 119 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House revolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4) to amend the Public Health Service Act to revise and extend the programs of the National Institutes of Health, and for other purposes, with Mr. Mfume in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California [Mr. Waxman] will be recognized for 30 minutes, and the gentleman from Virginia [Mr. Bliley] will be recognized for 30 minutes.

regulations establishing criteria for procedures so that human fetal tissue is accorded the same respect as other cadaveric human tissues is entitled to respect.

I do not intend to reargue the wisdom of their ultimate conclusion, but I do believe that Congress ought to include the safeguards which the Panel stated were necessary when they gave the go-ahead to fetal tissue transplantation research.

Moreover, Members of this body should at least have the opportunity to vote on these safeguards. That opportunity will be taken away if the substitute offered by the gentleman from California passes.

Why is this substitute being offered in the first place? In submitting the summary of his amendment to the Rules Committee, the author of the amendment described it as follows:

Restates language of the bill establishing requirements regarding the donation of fetal tissue for research purposes.

Restates. Not amends. Not modifies. Restates. The only point I see in offering such an amendment is to prevent the Members from getting a clean up or down vote on the safeguards outlined in the Bliley amendment.

Since the Waxman amendment merely restates the language in the bill, if it is not adopted, the safeguards in the bill will still remain. If it is adopted, we will have lost our chance to vote on the remainder of the NIH Panel's safeguards.

A vote for the Waxman substitute is a vote against the Bliley amendment. For this reason, I urge a "no" vote on the Waxman amendment and a "yes" vote on the Bliley amendment.

Mr. BLILEY. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Chairman, for purposes of closing the debate, I yield 2 minutes to the gentlewoman from Maryland [Mrs. Morella].

Mrs. MORELLA. Mr. Chairman, I rise in support of the Waxman substitute and in opposition to the Bliley amendment.

The bill, as currently drafted, provides strict safeguards for the donation of fetal tissue. The Waxman substitute further clarifies these safeguards, making it very clear that the decision to donate tissue must be made after the decision to have an abortion. It also adds another protection to ensure that only tissue that has been obtained under applicable State law may be used in research.

Fetal tissue research has already led to a number of medical advances and is very promising in fighting diseases ranging from Alzheimer's and Parkinson's disease to juvenile diabetes and leukemia. The Bliley amendment would add a number of unnecessary and burdensome regulations to the bill, further impeding this critical research that has already been delayed for the past 6 years. In addition, it would ban the use of tissue from abortions that may have been paid for with Federal funds. While the Federal funding of abortions is currently prohibited by the Hyde amendment, it has never been made a part of permanent authorizing language, and would add still another obstacle to the future funding of abortions for poor women who receive their health care from the Federal Government.

The Bliley amendment is opposed by a broad coalition of scientific and health organizations, including the American Medical Association, the American Academy of Pediatrics, and the American College of Physicians, to name just a few. These organizations agree that the safeguards in the bill are thorough and that the Bliley amendment will only unnecessarily delay this vital research. I urge my colleagues to vote yes on the Waxman amendment and to oppose the Bliley amendment.

Mr. PORTER, Mr. Chairman, I support the Waxman perfecting amendment to the Bliley amendment. This provision will ensure that all federally funded fetal tissue research complies fully with the ethical restrictions and guidelines established by the 1998 scientific panel appointed by President Reagan.

These restrictions ensure that the decision regarding fetal tissue donation is considered after the decision to abort has been made. In addition, tissue may not be sold, nor may it be directed to a particular donor. These guidelines ensure that fetal tissue research will not encourage women to seek abortions that they would not otherwise have sought.

The Bliley amendment adds additional and unnecessary requirements and would help to effectively reduce the availability of potentially life-saving treatments from tissue that would otherwise simply be discarded, providing no benefit to society.

Parkinson's, Alzheimer's, Lou Gehrig's, diabetes, leukemia, and cancer, what family has not been impacted by one of these dreaded usually fatal diseases? Mine has, as has just about every other Member of this body.

In our daily lives, we regularly encounter folks tragically afflicted with these diseases, and we hope and pray for a cure, a cure that will end their suffering and their fears and restore their life, their strength, and hopefully their ultimate victory over death.

A lot has been said about fetal tissue research, and I will remind you that it was a Ronald Reagan appointed panel that voted 17 to 4 that the research ought to continue.

There are strict safeguards to ensure that abortion is not promoted, and that the research continues in an ethical manner. It was my amendment, in fact, that prohibited the buying and selling of tissue in the private sector.

Mr. Chairman, there are many examples of the benefits that humankind has reaped from this research. In the early years of this century polio crippled so many, and today it has been virtually wiped out as a threat to our kids. In fact, the polio vaccine was developed through research using fetal tissue. It is this progress that we must not hinder. Such promise lies ahead for the end of so many diseases that will otherwise end so many lives.

The other body passed their companion bill, S. 1, with only four dissenting votes. Now it is our turn to pass H.R. 4.

Who has not found themselves at the point of desperation, where if granted one wish it would be to cure a loved one who was terminally ill, be it a parent, a child, a friend, or a colleague.

When the buzzers go off and you cast your vote on this issue, I will ask you all to take a few minutes to think about them.

We have all cried, cried for hope. This legislation is that hope. Let us take a step forward today and tomorrow in support of medical progress, a step to cure in our lifetime these killer diseases.

Mr. WAXMAN. Mr. Chairman, I am pleased to yield 1 minute to the gentlewoman from Maryland [Mrs. Morella].

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I urge my colleagues to vote for H.R. 4, the NIH Revitalization Act.

Passage of this critical legislation has been delayed for several years over the fetal tissue research provisions. The President has already issued a memorandum directing HHS to lift the ban on fetal tissue research; however, it is important that Congress approve legislation that eliminates the moratorium as well.

Fetal tissue research has already led to a number of medical advances and is very promising in fighting diseases, ranging from Alzheimer's and Parkinson's disease to juvenile diabetes and leukemia. The legislation includes important safeguards to ensure that any future research is conducted in an ethical manner. For example, fetal tissue could not be sold nor could donations be targeted to any particular individual. As a result of these protections, ethical concerns have been addressed. I urge my colleagues to vote for the Waxman substitute and to oppose the Bliley amendment.

Mr. Chairman, the women's health provisions are critical. We have seen progress made on women's health research at NIH; however, we have no guarantees that this progress will continue under future NIH directors. Many provisions of the Women's Health Equity Act are part of the bill, such as the requirement that women and minorities are represented in clinical trials. This provision is vital if we are to adequately understand the differences in the progression of HIV and other diseases in women. The lack of research on gender differences has serious ramifications on the effective and early treatment of, and access to benefits for, women.

Funding for breast and ovarian cancer, osteoporosis, and other women's diseases is increased, and the Office of Research on Women's Health is permanently authorized. These provisions and others in the bill will help to assure that the history of neglect of women's health will not be allowed to continue in the future. We have a long way to go to fill the many remaining gaps, but this bill represents a very important beginning.

Mr. Chairman, this bill is critical to the health of millions of Americans. I urge my colleagues to join me in voting for H.R. 4.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. Smith].

What is the obvious response from women? This is an intrusion into their medical history and could result in breaches of confidentiality. What is the obvious result? Women will continue to have abortions, but will decide not to allow the tissue to be donated for research. The tissue will be discarded and not used to help find ways to cure people with diseases.

I am offering a substitute for this Bliley amendment which would restate and clarify the safeguards in the bill. The safeguards in the bill were supported in the last Congress by a vote of 271 to 156 in this institution and in the Senate by a vote of 87 to 10. Those safeguards are supported by research groups, medical groups, and disease groups.

My amendment would also include several new provisions. It limits research to tissue that has been obtained in a legal manner under each State's abortion law. If a State has a restrictive law on abortion, this legislation will honor that restriction.

Furthermore, we would require a study on compliance with the safeguards so as not to allow abuse.

This amendment that I am offering as a substitute would enact the most important safeguards, and those are the safeguards to prevent any sale of fetal tissue for any purpose, just not for the purpose of research. It would be abhorrent to allow for a sale of fetal tissue and a market to be created for that sale. And second, we would enact the safeguards to prevent the donation or the dedication of research tissue for research on any particular individual because we do not want a woman to consider an abortion to help a friend or a relative. We want this decision on abortion to be separate from the decision on what will be the use of the fetal tissue.

My amendment in the nature of a substitute is supported by the research, medical, and disease groups that support fetal tissue research. The Bliley amendment is not supported by any of them, but in fact is opposed by them. In particular, the American Medical Association which fears the harassment of doctors—which may well result if the Bliley amendment were to be adopted—opposes the Bliley amendment.

Let us also recognize the statement by my friend and colleague from Virginia [Mr. Bliley], when he spoke earlier in the debate and told us what we knew from last year, that he is against fetal tissue transplantation research at all because he and others believe that it is abhorrent to use tissue from an abortion for that purpose. I think we should respect that point of view, but it is not the point of view that I believe is the majority one in this House and in the Senate and across this land. People understand and sincerely feel that we should not jeopardize the lives of people with diseases and tell them that this tissue is too political to study and that, therefore, what may save them—the tissue from a fetus that has died—will be discarded because we are all afraid of this abortion question. This debate should be focused on research, and if we are focused on research we should vote for the Waxman substitute and not for the Bliley amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield myself an additional 30 seconds.

Mr. Chairman, I would like to point out to my colleague from California who pointed out that this is somehow an unreasonable demand on doctors to keep their records for 5 years, I would point out that doctors keep their records considerably longer than 5 years if they are involved with babies because they are subject to a suit until the last baby they delivered reaches adulthood. So they already keep the records. So this is no additional burden.

Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Florida [Mr. Stearns], a member of the committee.

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Chairman, I want to thank my distinguished colleague, the gentleman from Virginia for yielding me the time.

Mr. Chairman, I would like to take this opportunity to voice my support for the amendment offered by the gentleman from Virginia [Mr. Bliley]. But before I do, I'd like to make a few comments regarding this bill.

This legislation contains many authorizations which I am pleased to support. These programs include the National Cancer Institute, National Heart, Lung, and Blood Institute, the National Institute on Aging, and research with respect to AIDS. Like my colleagues, I believe that it is imperative that research in the areas of breast, ovarian, prostate, and other cancers be adequately funded so that we might obtain a cure for these and other diseases and help the men and women in this country live longer and healthier lives.

NATIONAL INSTITUTES OF HEALTH REVITALIZATION ACT
OF 1993

MARCH 9, 1993.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 4]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4) to amend the Public Health Service Act to revise and extend the programs of the National Institutes of Health, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The Committee notes that those opponents of fetal tissue transplantation research who argue for the likelihood of abuse do a significant disservice to women of childbearing age. The decisions to become pregnant, to carry a pregnancy to term or to terminate it with an abortion are intensely personal and serious. Few, if any, women would undertake pregnancy in so callous a way as to be influenced by abstract goals of the general advancement of science or of knowledge. For those women who might actually be influenced in their decisions by the needs of family members or other specific individuals, the Committee has acted to shield strongly the decisions of abortion and research from each other.

These same opponents of fetal tissue transplantation research also do a grave disservice to biomedical researchers. This avenue of research is undertaken in order to limit or eliminate the suffering of those with serious diseases and disabilities. The men and women who perform such research are dedicated professionals. Indeed, it has been argued convincingly that the potential benefits of such research are so compelling that the very act of refraining from such research is itself unethical. While it is possible to conjure an image of a researcher so driven by his or her experimentation as to encourage women to have unwanted abortions, the Committee finds such activity extremely unlikely. Again, however, the Committee has acted to adopt restrictions that will effectively curb even that unlikely event.

Section 112—Purchase of human fetal tissue

Section 112 amends Title IV of the Public Health Service Act by adding a new section to be numbered 498B. Section 498B prohibits the purchase of human fetal tissue as well as the solicitation or acceptance of directed human fetal tissue donations. This provision codifies recommendations made by the expert panel and by various other ethical review bodies.

The Committee adopts the prohibition on the sale of human fetal tissue to make the treatment of such tissue parallel to the treatment of other human organs intended for transplantation (as provided in the Organ Procurement and Transplantation Act, P.L. 98-507). Indeed, the Committee has dealt with fetal tissue more restrictively than other transplantation, for although current organ transplant law prohibits the sale of organs, it allows for payment for the removal of the organ. The Committee, sensitive to the controversies surrounding Federal payment for abortion services, (which would in this instance be tantamount to the organ removal), has not allowed for such payment.

As discussed above in Section 111, the Committee has added the prohibition on solicitation or acceptance of directed donations of human fetal tissue in response to concerns that were raised about the possibility of such actions.

Section 113—Nullifications of moratorium

Section 113 codifies the Clinton Administration's nullification of the 1988 HHS moratorium on human fetal tissue transplantation research. Subsection (a) provides that if such research meets the conditions of Section 498A (as described above, at Section 111), no Federal official may adopt a policy to prohibit it.

Public Law 98-507
98th Congress

An Act

To provide for the establishment of the Task Force on Organ Transplantation and the Organ Procurement and Transplantation Network, to authorize financial assistance for organ procurement organizations, and for other purposes.

Oct. 19, 1984
[S. 2048]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Organ Transplant Act".

National Organ
Transplant Act.
42 USC 201 note.
Health.

TITLE I—TASK FORCE ON ORGAN PROCUREMENT AND
TRANSPLANTATION

ESTABLISHMENT AND DUTIES OF TASK FORCE

SEC. 101. (a) Not later than ninety days after the date of the enactment of this Act, the Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") shall establish a Task Force on Organ Transplantation (hereinafter in this title referred to as the "Task Force").

42 USC 273 note.

(b)(1) The Task Force shall—

(A) conduct comprehensive examinations of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation,

(B) prepare the assessment described in paragraph (2) and the report described in paragraph (3), and

(C) advise the Secretary with respect to the development of regulations for grants under section 371 of the Public Health Service Act.

Post, p. 2342.

(2) The Task Force shall make an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients, including—

(A) an analysis of the safety, effectiveness, and costs (including cost-savings from improved success rates of transplantation) of different modalities of treatment;

(B) an analysis of the extent of insurance reimbursement for long-term immunosuppressive drug therapy for organ transplant patients by private insurers and the public sector;

(C) an identification of problems that patients encounter in obtaining immunosuppressive medications; and

(D) an analysis of the comparative advantages of grants, coverage under existing Federal programs, or other means to assure that individuals who need such medications can obtain them.

(3) The Task Force shall prepare a report which shall include—

Report.

(A) an assessment of public and private efforts to procure human organs for transplantation and an identification of factors that diminish the number of organs available for transplantation;

(B) an assessment of problems in coordinating the procurement of viable human organs including skin and bone;

(C) recommendations for the education and training of health professionals, including physicians, nurses, and hospital and emergency care personnel, with respect to organ procurement;

(D) recommendations for the education of the general public, the clergy, law enforcement officers, members of local fire departments, and other agencies and individuals that may be instrumental in effecting organ procurement;

(E) recommendations for assuring equitable access by patients to organ transplantation and for assuring the equitable allocation of donated organs among transplant centers and among patients medically qualified for an organ transplant;

(F) an identification of barriers to the donation of organs to patients (with special emphasis upon pediatric patients), including an assessment of—

(i) barriers to the improved identification of organ donors and their families and organ recipients;

(ii) the number of potential organ donors and their geographical distribution;

(iii) current health care services provided for patients who need organ transplantation and organ procurement procedures, systems, and programs which affect such patients;

(iv) cultural factors affecting the family with respect to the donation of the organs; and

(v) ethical and economic issues relating to organ transplantation needed by chronically ill patients;

(G) recommendations for the conduct and coordination of continuing research concerning all aspects of the transplantation of organs;

(H) an analysis of the factors involved in insurance reimbursement for transplant procedures by private insurers and the public sector;

(I) an analysis of the manner in which organ transplantation technology is diffused among and adopted by qualified medical centers, including a specification of the number and geographical distribution of qualified medical centers using such technology and an assessment of whether the number of centers using such technology is sufficient or excessive and of whether the public has sufficient access to medical procedures using such technology; and

(J) an assessment of the feasibility of establishing, and of the likely effectiveness of, a national registry of human organ donors.

MEMBERSHIP

42 USC 273 note. SEC. 102. (a) The Task Force shall be composed of twenty-five members as follows:

(1) Twenty-one members shall be appointed by the Secretary of which:

(A) nine members shall be physicians or scientists who are eminent in the various medical and scientific specialties related to human organ transplantation;

(B) three members shall be individuals who are not physicians and who represent the field of human organ procurement;

(C) four members shall be individuals who are not physicians and who as a group have expertise in the fields of law,

theology, ethics, health care financing, and the social and behavioral sciences;

(D) three members shall be individuals who are not physicians or scientists and who are members of the general public; and

(E) two members shall be individuals who represent private health insurers or self-insurers.

(2) The Surgeon General of the United States, the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, and the Administrator of the Health Care Financing Administration shall be ex officio members.

(b) No individual who is a full-time officer or employee of the United States may be appointed under subsection (a)(1) to the Task Force. A vacancy in the Task Force shall be filled in the manner in which the original appointment was made. A vacancy in the Task Force shall not affect its powers.

(c) Members shall be appointed for the life of the Task Force.

(d) The Task Force shall select a Chairman from among its members who are appointed under subsection (a)(1).

(e) Thirteen members of the Task Force shall constitute a quorum, but a lesser number may hold hearings.

(f) The Task Force shall hold its first meeting on a date specified by the Secretary which is not later than thirty days after the date on which the Secretary establishes the Task Force under section 101. Thereafter, the Task Force shall meet at the call of the Chairman or a majority of its members, but shall meet at least three times during the life of the Task Force.

(g)(1) Each member of the Task Force who is not an officer or employee of the United States shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) during which such member is engaged in the actual performance of duties as a member of the Task Force. Each member of the Task Force who is an officer or employee of the United States shall receive no additional compensation.

(2) While away from their homes or regular places of business in the performance of duties for the Task Force, all members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

SUPPORT FOR THE TASK FORCE

SEC. 103. (a) Upon request of the Task Force, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Task Force to assist the Task Force in carrying out its duties under this Act. 42 USC 273 note.

(b) The Secretary shall provide the Task Force with such administrative and support services as the Task Force may require to carry out its duties.

REPORT

SEC. 104. (a) The Task Force may transmit to the Secretary, the Committee on Labor and Human Resources of the Senate, and the 42 USC 273 note.

Committee on Energy and Commerce of the House of Representatives such interim reports as the Task Force considers appropriate.

Report. (b) Not later than 7 months after the date on which the Task Force is established by the Secretary under section 101, the Task Force shall transmit a report to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives on its assessment under section 101(b)(2) of immunosuppressive medications used to prevent organ rejection.

Report. (c) Not later than twelve months after the date on which the Task Force is established by the Secretary under section 101, the Task Force shall transmit a final report to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives. The final report of the Task Force shall include—

(1) a description of any findings and conclusions of the Task Force made pursuant to any examination conducted under section 101(b)(1)(A),

(2) the matters specified in section 101(b)(3), and

(3) such recommendations as the Task Force considers appropriate.

TERMINATION

42 USC 273 note. SEC. 105. The Task Force shall terminate three months after the date on which the Task Force transmits the report required by section 104(c).

TITLE II—ORGAN PROCUREMENT ACTIVITIES

SEC. 201. Part H of title III of the Public Health Service Act is amended to read as follows:

“PART H—ORGAN TRANSPLANTS

“ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS

Grants.
42 USC 273. “SEC. 371. (a)(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b).

“(2) The Secretary may make grants for the establishment, initial operation, and expansion of qualified organ procurement organizations described in subsection (b).

“(3) In making grants under paragraphs (1) and (2), the Secretary shall—

“(A) take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ Transplant Act, and

“(B) give special consideration to applications which cover geographical areas which are not adequately served by organ procurement organizations.

Ante, p. 2339.

“(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

“(A) is a nonprofit entity,

“(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

“(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

42 USC 1395.

“(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

“(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire State) will include at least fifty potential organ donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

“(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

“(G) has a board of directors or an advisory board which—

“(i) is composed of—

“(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

“(II) members who represent the public residing in such area,

“(III) a physician with knowledge, experience, or skill in the field of histocompatibility,

“(IV) a physician with knowledge or skill in the field of neurology, and

“(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

“(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2), and

“(iii) has no authority over any other activity of the organization.

“(2) An organ procurement organization shall—

“(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

“(B) conduct and participate in systematic efforts, including professional education, to acquire all useable organs from potential donors,

“(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 372(b)(2)(D),

“(D) arrange for the appropriate tissue typing of donated organs,

“(E) have a system to allocate donated organs among transplant centers and patients according to established medical criteria,

“(F) provide or arrange for the transportation of donated organs to transplant centers,

“(G) have arrangements to coordinate its activities with transplant centers in its service area,

“(H) participate in the Organ Procurement Transplantation Network established under section 372,

“(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors, and

“(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs.

Appropriation authorization.

“(c) For grants under subsection (a) there are authorized to be appropriated \$5,000,000 for fiscal year 1985, \$8,000,000 for fiscal year 1986, and \$12,000,000 for fiscal year 1987.

“ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

42 USC 274.

“SEC. 372. (a) The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b). The amount provided under such contract in any fiscal year may not exceed \$2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

“(b)(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

“(A) be a private nonprofit entity which is not engaged in any activity unrelated to organ procurement, and

“(B) have a board of directors which includes representatives of organ procurement organizations (including organizations which have received grants under section 371), transplant centers, voluntary health associations, and the general public.

“(2) The Organ Procurement and Transplantation Network shall—

“(A) establish in one location or through regional centers—

“(i) a national list of individuals who need organs, and

“(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

“(B) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

“(C) assist organ procurement organizations in the distribution of organs which cannot be placed within the service areas of the organizations,

“(D) adopt and use standards of quality for the acquisition and transportation of donated organs,

“(E) prepare and distribute, on a regionalized basis, samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility of such individuals with organ donors,

“(F) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

“(G) provide information to physicians and other health professionals regarding organ donation, and

“(H) collect, analyze, and publish data concerning organ donation and transplants.

“SCIENTIFIC REGISTRY

“SEC. 373. The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status of organ transplantation. The Secretary shall prepare for inclusion in the report under section 376 an analysis of information derived from the registry.

42 USC 274a.

“GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS

“SEC. 374. (a) No grant may be made under section 371 or 373 or contract entered into under section 372 or 373 unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

Grants.
42 USC 274b.

“(b)(1) In considering applications for grants under section 371—

“(A) the Secretary shall give priority to any applicant which has a formal agreement of cooperation with all transplant centers in its proposed service area,

“(B) the Secretary shall give special consideration to organizations which met the requirements of section 371(b) before the date of the enactment of this section, and

“(C) the Secretary shall not discriminate against an applicant solely because it provides health care services other than those related to organ procurement.

The Secretary may not make a grant for more than one organ procurement organization which serve the same service area.

Prohibition.

“(2) A grant for planning under section 371 may be made for one year with respect to any organ procurement organization and may not exceed \$100,000.

“(3) Grants under section 371 for the establishment, initial operation, or expansion of organ procurement organizations may be made for two years. No such grant may exceed \$500,000 for any year and no organ procurement organization may receive more than \$800,000 for initial operation or expansion.

“(c)(1) The Secretary shall determine the amount of a grant made under section 371 or 373. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

“(2)(A) Each recipient of a grant under section 371 or 373 shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that

Records.

- portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.
- Audit. “(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under section 371 or 373 that are pertinent to such grant.
- “(d) For purposes of this part:
- “(1) The term ‘transplant center’ means a health care facility in which transplants of organs are performed.
- “(2) The term ‘organ’ means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas and eyes) specified by the Secretary by regulation and for purposes of section 373, such term includes bone marrow.

“ADMINISTRATION

- 42 USC 274c. “SEC. 375. The Secretary shall, during fiscal years 1985, 1986, 1987, and 1988, designate and maintain an identifiable administrative unit in the Public Health Service to—
- 42 USC 1395. Public information. “(1) administer this part and coordinate with the organ procurement activities under title XVIII of the Social Security Act,
- “(2) conduct a program of public information to inform the public of the need for organ donations,
- “(3) provide technical assistance to organ procurement organizations receiving funds under section 371, the Organ Procurement and Transplantation Network established under section 372, and other entities in the health care system involved in organ donations, procurement, and transplants, and
- Report. “(4) one year after the date on which the Task Force on Organ Transplantation transmits its final report under section 104(c) of the National Organ Transplant Act, and annually thereafter through fiscal year 1988, submit to Congress an annual report on the status of organ donation and coordination services and include in the report an analysis of the efficiency and effectiveness of the procurement and allocation of organs and a description of problems encountered in the procurement and allocation of organs.

“REPORT

- 42 USC 274d. “SEC. 376. The Secretary shall annually publish a report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report.”.

TITLE III—PROHIBITION OF ORGAN PURCHASES

- Penalties. 42 USC 274e. SEC. 301. (a) It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.
- (b) Any person who violates subsection (a) shall be fined not more than \$50,000 or imprisoned not more than five years, or both.
- (c) For purposes of subsection (a):
- (1) The term “human organ” means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin,

and any other human organ specified by the Secretary of Health and Human Services by regulation.

(2) The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term "interstate commerce" has the meaning prescribed for it by section 201(b) of the Federal Food, Drug and Cosmetic Act.

21 USC 321.

TITLE IV—MISCELLANEOUS

BONE MARROW REGISTRY DEMONSTRATION AND STUDY

SEC. 401. (a) Not later than nine months after the date of enactment of this Act, the Secretary of Health and Human Services shall hold a conference on the feasibility of establishing and the effectiveness of a national registry of voluntary bone marrow donors.

42 USC 273 note.

(b) If the conference held under subsection (a) finds that it is feasible to establish a national registry of voluntary donors of bone marrow and that such a registry is likely to be effective in matching donors with recipients, the Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall, for purposes of the study under subsection (c), establish a registry of voluntary donors of bone marrow. The Secretary shall assure that—

(1) donors of bone marrow listed in the registry have given an informed consent to the donation of the bone marrow; and

(2) the names of the donors in the registry are kept confidential and access to the names and any other information in the registry is restricted to personnel who need the information to maintain and implement the registry, except that access to such other information shall be provided for purposes of the study under subsection (c).

If the conference held under subsection (a) makes the finding described in this subsection, the Secretary shall establish the registry not later than six months after the completion of the conference.

(c) The Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall study the establishment and implementation of the registry under subsection (b) to identify the issues presented by the establishment of such a registry, to evaluate participation of bone marrow donors, to assess the imple-

Report.

mentation of the informed consent and confidentiality requirements, and to determine if the establishment of a permanent bone marrow registry is needed and appropriate. The Secretary shall report the results of the study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than two years after the date the registry is established under subsection (b).

Approved October 19, 1984.

LEGISLATIVE HISTORY—S. 2048 (H.R. 5580) (H.R. 4080):

HOUSE REPORTS: No. 98-575, Pt. 1, accompanying H.R. 4080 (Comm. on Energy and Commerce), No. 98-769 accompanying H.R. 5580 (Comm. on Energy and Commerce), and No. 98-1127 (Comm. of Conference).

SENATE REPORT No. 98-382 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD, Vol. 130 (1984):

Apr. 11, considered and passed Senate.

June 20, 21, H.R. 5580 considered and passed House; S. 2048, amended, passed in lieu.

Oct. 3, House agreed to conference report.

Oct. 4, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 42 (1984):

Oct. 19, Presidential statement.

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


December 17, 2015

Ms. Cate Dyer
Founder & CEO
StemExpress


Dear Ms. Dyer:

We thank you for your August 21, 2015, production of StemExpress materials to the Committee on Energy and Commerce. On October 7, 2015, the U.S. House of Representatives passed H. Res. 461, which created the Select Panel on Infant Lives and empowered the panel to investigate issues related to fetal tissue research. This document request is made pursuant to the scope of investigative responsibility of the panel.

As a result, we are hereby requesting that you produce the following categories of documents and information created or dated on or after January 1, 2010:

- 1) A list of all entities, including firms, corporations, non-profit organizations, and educational institutions, from which StemExpress receives or procures fetal tissue.¹
- 2) A list of all entities, including firms, corporations, non-profit organizations, and educational institutions, to which StemExpress sells or donates fetal tissue.
- 3) A list of all entities, including firms, corporations, non-profit organizations, and educational institutions, to which StemExpress transferred, subcontracted or sold any business interest or business assets related to the procurement or sale of fetal tissue.
- 4) An organization chart that details StemExpress personnel that procure fetal tissue at the clinic level and the supervisory personnel for those procurers of fetal tissue.

¹ Please note that, for the purposes of this request, the term "fetal tissue" includes tissue, organs, body parts, and cell lines.

- 5) All communications, whether internal or external, that direct StemExpress personnel to procure fetal tissue, including, but not limited to memoranda, emails, telephone messages, and purchase orders or bills of sale.
- 6) All accounting records including accounting memoranda related to the cost and pricing of fetal tissue.
- 7) All specific requests made to StemExpress for fetal tissue made by any and all firms, corporations, non-profit organizations, educational institutions, or other entities, including, but not limited to, order lists, billing records, payment records, payment vouchers, and receipts.
- 8) All documents relating to the purchase, ownership, or rental by StemExpress of equipment involving fetal tissue research, the preparation of fetal tissue for research, the modification of fetal tissue into cell lines, or any other actions taken by StemExpress related to fetal tissue including, but not limited to, the date the equipment was purchased, its purchase price, its maintenance costs, and records of the depreciation treatment under the tax code of any such equipment.
- 9) An inventory record of all fetal tissues obtained, sold, or retained by StemExpress, as well as an inventory of current fetal tissue including, in particular, any records that refer to multiple tissue samples or organs or body parts harvested from a single fetus.
- 10) All records related to any fetal tissue or cell lines procured or sold from twin fetuses.
- 11) All documents relating to rent or site fees paid to entities from which StemExpress obtained, sold, or donated fetal tissue.
- 12) All training materials used by StemExpress for the procurement of fetal tissue, preparation of fetal tissue, storage of fetal tissue, and training materials or guidance documents related to StemExpress staff relations with personnel or patients at the source entities from which fetal tissue is procured.
- 13) All StemExpress banking records related to the procurement, sale, donation, or distribution or shipment of fetal tissue.

Please produce the requested documents by the close of business on December 29, 2015. Instructions for responding to the Select Panel's document requests are included as an attachment to this letter.

If you have any questions about this request, please contact Matthew Tallmer of the Select Panel Staff at [REDACTED] or by email at [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Marsha Blackburn". The signature is written in black ink and is positioned above a horizontal line.

Marsha Blackburn
Chair
Select Panel on Infant Lives

Attachment(s)

cc: The Honorable Jan Schakowsky, Ranking Member
Select Panel on Infant Lives

StemExpress First Response to House Select Panel Document Requests

| Request No. | Description |
|-------------|--|
| 1 | A list of all entities, including firms, corporations, non-profit organizations, and educational institutions, from which StemExpress receives or procures fetal tissue. |

StemExpress LLC (“StemExpress”) has previously obtained fetal tissue from two Planned Parenthood affiliates:

- Planned Parenthood Mar Monte (“PPMM”)
- Planned Parenthood Shasta Pacific (“PPSP”)

StemExpress terminated its relationship with PPMM and PPSP in August 2015 and, therefore, has not received any tissue from either Planned Parenthood affiliate since that time.

StemExpress has also received fetal tissue from independent (non-Planned Parenthood) clinics. StemExpress agrees to identify the states where it has agreements with independent clinics, but will not be voluntarily providing the names of these clinics to protect their safety and security. To that end, StemExpress has active agreements with independent clinics in the following three states to procure fetal tissue that is used solely for the production of isolated stem cells (*i.e.*, StemExpress LLC no longer provides unaltered fetal tissue to any of its research partners or customers):

- California – one independent clinic
- Florida – one independent clinic
- Washington – one independent clinic

StemExpress First Response to House Select Panel Document Requests

| Request No. | Description |
|-------------|--|
| 2 | A list of all entities, including firms, corporations, non-profit organizations, and educational institutions, to which StemExpress sells or donates fetal tissue. |

StemExpress is a small life sciences company that supports leading research institutions in the United States and internationally—including medical schools, pharmaceutical companies, and federal agencies—to provide stem cells and other human tissue critical to medical research. Cells produced by the physicians, scientists, medical technicians and nurses at StemExpress are currently used in research globally aimed at finding cures and treatments for cancer, diabetes, HIV/AIDS, cardiac disease, and other significant medical conditions.

StemExpress deeply values the confidentiality of its research partners and customers; in fact, many of the company’s contracts are subject to non-disclosure agreements and, therefore, cannot be voluntarily produced. However, as discussed with Select Panel staff, several of StemExpress’ customer relationships are public and can be identified for your consideration:

Universities and Medical Schools:

- Dartmouth College
- Duke University
- Harvard Medical School
- Johns Hopkins University
- Stanford University
- University of California, Los Angeles
- University of Connecticut
- University of Pennsylvania
- Yale University

Pharmaceutical and Life Sciences Companies:

- Ariosa Diagnostics
- BD
- Genentech
- The Jackson Laboratory
- Novartis
- PerkinElmer
- Pfizer
- Quest Diagnostics
- Roche

Federal Government:

- U.S. Food and Drug Administration (FDA)

StemExpress First Response to House Select Panel Document Requests

| Request No. | Description |
|-------------|--|
| 6 | All accounting records including accounting memoranda related to the cost and pricing of fetal tissue. |

The overwhelming majority of StemExpress’ business involves isolating and purifying cells derived from donated adult tissue and blood (described in greater detail below). A small portion of our work-flow involves isolated cells that are manufactured using fetal tissue. As of January 2016, StemExpress has discontinued completely the sale of unaltered fetal tissue.

To be clear, less than one percent of StemExpress’ business in 2014 and 2015 dealt with unaltered fetal tissue, which has been the source of criticism in the attacks against StemExpress and Planned Parenthood since July 2015. In fact, the central reason that StemExpress offered unaltered fetal tissue to our customers was as an extension of our cell isolation business, as some customers sought both isolated cells manufactured by StemExpress and, on occasion, decided to perform their own cell isolations using unaltered tissue they sought from our company.

Unaltered Fetal Tissue

As a general matter, StemExpress’ limited business in unaltered fetal tissue—which represented less than one percent of the company’s revenue in 2014 and has since been discontinued—resulted in a *net loss* for the company. For example, StemExpress manually reviewed records for 2014 and determined that unaltered fetal tissue procured from Planned Parenthood affiliates generated approximately \$50,000 in gross (pre-tax) revenue against expenses in excess of \$75,000. StemExpress charged researchers a fee of roughly \$500 to \$600 for unaltered tissues, but incurred directly associated expenses of approximately \$750 to \$1,000 for each procurement. Part of those expenses included the roughly \$30,000 paid to two Planned Parenthood clinics for reasonable costs and expenses before StemExpress terminated our relationship with them in August 2015. Other expenses included compensation paid to StemExpress’ tissue procurement personnel and costs associated with training, packaging and ordering supplies, overnight shipping charges, infectious disease screening, and general overhead associated with safely and securely providing these products to our customers.

Some may ask why would we offer any service/product at a loss, and the answer is our mission statement – *StemExpress accelerates the cure and prevention of significant medical conditions at life changing speed.*

StemExpress First Response to House Select Panel Document Requests

| Request No. | Description |
|-------------|--|
| 11 | All documents relating to rent or site fees paid to entities from which StemExpress obtained, sold, or donated fetal tissue. |

StemExpress does not pay any rent or site fees to the independent clinics with which it currently works to obtain fetal tissue used solely in the production of isolated stem cells. Similarly, at the time when StemExpress personnel were onsite at Planned Parenthood clinics (prior to the August 2015 termination), the company did not pay a separate rent or site fee to PPM or PPSP. Instead, any costs/expenses related to rent or space usage were rolled into the single payment to reimburse the clinic for its expenses.

The costs incurred by StemExpress were not uniform across all procurement of fetal tissues. However, the estimated costs below are a conservative estimate (*i.e.*, underestimate) of the costs and expenses associated with the procurement of fetal liver tissue at a Planned Parenthood clinic (*i.e.*, prior to August 2015, when StemExpress had personnel working onsite in the clinics). The costs/expenses of procurement were generally the same whether the tissue was being sent directly to a researcher in unaltered form or back to StemExpress' laboratory for use in the manufacture of isolated cells.

Estimated Cost for Procurement of Fetal Liver Tissue Sample

| Item | Description | Time | Est. Cost |
|-------------------------------|--|----------------|-----------|
| Procurement Manager labor | Receive and evaluate purchase order, enter into Sage and task board, assign to clinics | 1 hour x \$35 | \$35 |
| Packaging supplies | Packaging all supplies needed for procurement | 1 hour x \$10 | \$10 |
| FedEx | Supplies to clinic | N/A | \$85 |
| Mileage | Mileage paid to technician (.56/mile) | N/A | \$142 |
| Supply cost | Box, conical tube, media, petri dish, labels, biohazard bag, gel packs, etc. | N/A | \$30 |
| Technician labor | Patient consent, procurement, paperwork, packaging | 8 hours x \$10 | \$80 |
| Technician compensation | Technician compensation package | N/A | \$50 |
| Clinic Reimbursement | Technician space, storage of supplies, blood draw chair usage, consent space | N/A | \$55 |
| Infectious disease draw | Supplies: tubes, labels, needle, biohazard bag, etc | N/A | \$15 |
| Infectious disease screening | Screening for HIV, HepB, HepC, LCMV | N/A | \$155 |
| FedEx | Shipment to the lab | N/A | \$85 |
| Procurement Manager labor | Review paperwork, communications with courier, communications with researcher | 1 hours x \$35 | \$35 |
| Product Receipt | Receipt of product at front desk, check into Sage, check into log | 1 hour x \$15 | \$15 |
| Inventory & Supply Management | Prorated stores management | 1 hour x \$20 | \$20 |

Total Estimated Cost/Expenses for Procurement of Fetal Liver Tissue: \$812.00

StemExpress Estimated Costs and Expenses Associated with Fetal Tissue Procurement (2011-2015)

Attorney created costs (ACC.1)



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| Item | Description | Time | Estimated Cost/Expenses 2015 | Estimated Cost/Expenses 2014 | Estimated Cost/Expenses 2013 | Estimated Cost/Expenses 2012 | Estimated Cost/Expenses 2011 |
|--------------------------------------|---|----------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| Procurement Manager Labor | Receive and evaluate purchase order, enter into computer system and task board, assign to clinics | 1 hour x \$35 | \$ 35.00 | \$ 35.00 | \$ 25.00 | \$ 10.00 | \$ 10.00 |
| Packaging Supplies Labor | Packaging all supplies needed for procurement | 1 hour x \$10 | \$ 10.00 | \$ 10.00 | \$ 10.00 | \$ 10.00 | \$ 10.00 |
| Shipping | Supplies to clinic | N/A | \$ 45.00 | \$ 45.00 | \$ 15.00 | \$ - | \$ - |
| Mileage | Mileage paid to technician (.56/mile) | N/A | \$ 142.00 | \$ 142.00 | \$ 75.00 | \$ 71.00 | \$ 71.00 |
| Supply Costs | Box, conical tube, media, petri dish, labels, biohazard bag, gel packs, etc. | N/A | \$ 30.00 | \$ 30.00 | \$ 30.00 | \$ 30.00 | \$ 30.00 |
| Technician Base Labor | Patient consent, procurement, paperwork, packaging | 8 hours x \$10 | \$ 80.00 | \$ 80.00 | \$ 80.00 | \$ 80.00 | \$ 80.00 |
| Technician Supplemental Compensation | Technician Supplemental Compensation | N/A | \$ 50.00 | \$ 50.00 | \$ 30.00 | \$ 25.00 | \$ - |
| Clinic Reimbursement | Technician space, storage of supplies, blood draw chair usage, consent space | N/A | \$ 55.00 | \$ 55.00 | \$ 55.00 | \$ 55.00 | \$ 55.00 |
| Infectious Disease Draw | Supplies: tubes, labels, needle, biohazard bag, etc | N/A | \$ 15.00 | \$ 15.00 | \$ 15.00 | \$ 15.00 | \$ 15.00 |
| Infectious Disease Screening | Screening for HIV, HepB, HepC, LCMV | N/A | \$ 155.00 | \$ 155.00 | \$ 70.00 | \$ 66.00 | \$ 66.00 |
| Shipping | Average Shipment cost to the lab (blood and/or tissue) | N/A | \$ 45.00 | \$ 45.00 | \$ 20.00 | \$ 10.00 | \$ - |
| Procurement Manager labor | Review paperwork, communications with courier, communications with researcher | 1 hours x \$35 | \$ 35.00 | \$ 35.00 | \$ 35.00 | \$ 35.00 | \$ 35.00 |
| Product Receipt | Receipt of product at front desk, check into computer system, check into log | 1 hour x \$15 | \$ 15.00 | \$ 15.00 | \$ 15.00 | \$ 15.00 | \$ 15.00 |
| Inventory & Supply Management | Prorated stores management | 1 hour x \$20 | \$ 20.00 | \$ 20.00 | \$ 20.00 | \$ 20.00 | \$ 20.00 |
| TOTAL | | | \$ 732.00 | \$ 732.00 | \$ 495.00 | \$ 442.00 | \$ 407.00 |

Supplies, Infectious disease screening and shipping reflected as costs per this attorney created accounting summary reflecting a cost sheet for fetal tissue procurement.



STEMEXPRESS, LLC



stemexpress.com

Invoice

| | |
|------------|------------|
| Date | Invoice # |
| 02/16/2013 | 2003 |
| Terms | Due Date |
| Net 30 | 03/18/2013 |

Bill To

Baylor College of Medicine
 Attn: Accounts Payable
 [Redacted]

Ship To

[Redacted]
 Baylor College of Medicine
 [Redacted]

PAID

| Ship Date | Ship Via | Tracking No. | Researcher | P.O. No | Shipping |
|------------|----------|--------------|------------|------------|------------------|
| 02/13/2013 | FedEx | 794747715995 | [Redacted] | 5600785871 | StemExpress Acct |

| Description | Qty | Price | Amount Due |
|---|------|--------|------------|
| 02/13/2013 | | | |
| • Fetal Pancreas Procurement, POC # 03 - Pancreas | 1:00 | 250.00 | 250.00 |
| • Infectious Disease Screening: HIV, HBsAg, HCV | 1:00 | 125.00 | 125.00 |
| • FedEx Priority Overnight | 1:00 | 85.00 | 85.00 |

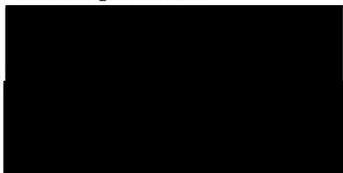
Reflected as a cost to Stem Express per the attorney-created cost sheet (see ACC.1, page 1), although per this invoice, same is being charged to the customer. Also, note that these were not reported as revenue per the attorney-created "revenue from fetal tissue sales" (see ACR.1, page 4).

Thank you for your business. If you have any questions, contact [Redacted] at [Redacted] or by email at [Redacted]@stemexpress.com.

| | |
|-------------|----------|
| Total | \$460.00 |
| Payment | \$460.00 |
| Balance Due | \$0.00 |



StemExpress LLC



Invoice

| | |
|------------|------------|
| Date | Invoice # |
| 07/31/2014 | 4655 |
| Terms | Due Date |
| Net 30 | 08/30/2014 |

SUSTAINING QUALITY OF LIFE THROUGH RESEARCH™

| |
|----------------------|
| Bill To |
| Redacted |
| UMASS Medical School |
| Redacted |

PAID

| | |
|-------------|----------|
| Balance Due | Enclosed |
| \$0.00 | |

Please detach top portion and return with your payment.

| Ship Date | Ship Via | Tracking No. | Researcher | P.O. No. | Shipping |
|------------|---|----------------|------------|------------|-------------|
| 07/30/2014 | FedEx | 7707 2420 3030 | Redacted | WA00205031 | Client Acct |
| Date | Activity | Quantity | Rate | Amount | |
| 07/30/2014 | Item #FT0101F: Human Fetal Tissue - Thymus POC #01 Donor matched to fetal liver | 1 | 595.00 | 595.00 | |
| 07/30/2014 | Discount on Item #FT0101F | -1 | 119.00 | -119.00 | |
| 07/30/2014 | Item #CUSMED01: Custom Media | 1 | 195.00 | 195.00 | |
| 07/30/2014 | Item #PKG0100: Packaging- Gel Pack | 1 | 15.00 | 15.00 | |

Reflected as a cost to Stem Express per the attorney-created cost sheet (see ACC.1, page 1), although per this invoice, same is being charged to the customer.

Thank you for your business. If you have any questions, please contact Accounts Receivable at [Redacted]
 Please note: Invoices not paid within the designated terms are subject to a late fee equal to 10% of the balance and a 1.5% per month (18% annum) interest fee, compounded monthly.

| | |
|-------------|----------|
| Total | \$686.00 |
| Payment | \$686.00 |
| Balance Due | \$0.00 |

ACR.1

StemExpress, LLC 2013

Sales by Product/Service Detail

January - December 2013

HIGHLY CONFIDENTIAL INFORMATION
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| Customer Name | Date | Transaction Type | Num | Client | Memo/Description | Qty | Rate | Amount |
|--|------------|------------------|------|-------------------------------------|---|-------|--------|--------------------|
| Credit - Returns/Allowances | | | | | | | | |
| | 02/28/2013 | Invoice | 2040 | Baylor College of Medicine (Lab #1) | unusable sample - client unable to procure pancreas | -1.00 | 250.00 | -250.00 |
| Total for Credit - Returns/Allowances | | | | | | | | -\$ 250.00 |
| Fetal Tissue Procurement | | | | | | | | |
| Fetal Pancreas Procurement | | | | | | | | |
| | 01/12/2013 | Invoice | 1940 | Baylor College of Medicine (Lab #1) | Fetal Pancreas Procurement, POC # 09 - Pancreas | 1.00 | 250.00 | 250.00 |
| | 01/12/2013 | Invoice | 1940 | Baylor College of Medicine (Lab #1) | Fetal Liver Procurement, POC # 09 - Liver | 1.00 | 250.00 | 250.00 |
| | 02/16/2013 | Invoice | 2003 | Baylor College of Medicine (Lab #1) | Fetal Pancreas Procurement, POC # 03 - Pancreas | 1.00 | 250.00 | 250.00 |
| | 02/21/2013 | Invoice | 2022 | Baylor College of Medicine (Lab #1) | Fetal Pancreas Procurement, POC # 01 - Pancreas | 1.00 | 250.00 | 250.00 |
| | 02/28/2013 | Invoice | 2040 | Baylor College of Medicine (Lab #1) | Fetal Pancreas Procurement | 1.00 | 250.00 | 250.00 |
| Total for Fetal Pancreas Procurement | | | | | | | | \$ 1,250.00 |

City of Hope

This attorney created revenue report from fetal tissue sales does not reflect revenue from infectious disease screening.

Tallmer, Matthew

From: Tallmer, Matthew
Sent: Friday, January 08, 2016 9:46 AM
To: Sidhu, Amandeep
Subject: RE: StemExpress production follow-up

This message has been archived. [View the original item](#)

Aman:

Your understanding of request # 4 is correct. We are will to accept production of an organizational chart that identifies titles/positions, but not the specific names of StemExpress personnel. We await the outcome of your discussion with StemExpress regarding requests #1 and #2 , as well as the latest tranche of the rolling production. Please let me know when that production is ready.

As always, do not hesitate to contact me should you have any questions.

Yours,

Matt

From: Sidhu, Amandeep [mailto:]
Sent: Thursday, January 07, 2016 5:09 PM
To: Tallmer, Matthew
Cc: Ryan, Stephen
Subject: RE: StemExpress production follow-up

Matt,

We expect to have the next production out to you by the end of next week, if not sooner. I also owe you a response on your email yesterday regrading Request Nos. 1, 2, and 4. We are still working through these categories with our client to determine whether we can provide the Select Panel with sufficient information to meet your needs under each of these requests.

To confirm our understanding of Request No. 4, we understood from our teleconference that you and March would be comfortable with an organizational chart that identifies titles/positions, but not the specific names of StemExpress personnel. Can you please confirm this understanding for us?

With that clarification, we will provide you with a final response regarding these three outstanding requests by Monday (1/11).

Thanks,

Aman

Amandeep S. Sidhu
Partner

[REDACTED]
McDermott Will & Emery LLP | The McDermott Building | [REDACTED]

Tel + [REDACTED] | Mobile + [REDACTED] | Fax + [REDACTED]

[REDACTED]
Secretarial Team 7 South, Assistant to Amandeep S. Sidhu

Tel + [REDACTED]

From: Tallmer, Matthew [mailto:[REDACTED]]
Sent: Thursday, January 07, 2016 3:32 PM
To: Sidhu, Amandeep
Subject: StemExpress production follow-up

Aman:

As we have previously discussed, the Select Panel is willing to accept a rolling production, and you agreed to do so. I am writing to inquiry when we can expect the next tranche in the StemExpress rolling production.

Thanks.

Matthew Tallmer

Investigator

Select Panel on Infant Lives



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Please visit <http://www.mwe.com/> for more information about our Firm.

Attachments:

[image001.gif](#)

(5 KB)

HANDLING OF HUMAN FETAL TISSUE
PLANNING, ANALYSIS & REPORTING

Objectives

The objectives of this Analysis plan are as follows:

- (1) Obtain sufficient appropriate accounting and financial documentation to analyze the expenses (including cost) involved in, and revenue derived from, the procurement and trade of human fetal tissues for the following years 2010, 2011, 2013, 2014, and 2015.
- (2) Determine the cost of grants on medical research involving the use of human fetal tissue.

This analysis will attempt to determine the extent of valuable consideration (including to the extent possible, in-kind consideration) involved in the procurement and trade of human fetal tissue.

| | Name | Date | W/P Ref |
|---|------|------|---------|
| I. General Procedures Throughout the Analysis and Reporting | | | |
| A. Obtain and review laws and amendments relevant to the prohibition of profiting from human fetal tissue sales. Seek an understanding of the law. | | | |
| B. Obtain and review documents pertaining to the business models of entities involved in procurement and trade involving human fetal tissue sales. Seek an understanding of the business models. | | | |
| C. Review and tabulate the cost of grants on medical research involving the use of human fetal tissue as issued by the National Institute of Health (NIH) for the following years: 2014, 2015. | | | |
| II. Document Requests and data Collection | | | |
| Develop and prepare separate document request lists for Abortion Clinics (AC), Procurement Businesses (PB) and | | | |

| | Name | Date | W/P Ref |
|--|------|------|---------|
| the Customer (CM). | | | |
| 1. Coordinate with the Investigative Counsel, the Chief Counsel and the House Counsel to ensure questions conform to legal standards for requesting documents through a subpoena. | | | |
| 2. Prepare an excel spreadsheet to track the productions from the various entities and save the documents in a designated folder. | | | |
| III. Analytical Procedures | | | |
| A. For each (or selected) Procurement Businesses (PB) | | | |
| Determine PB's Inflows from Fetal Tissue Sales | | | |
| 1. Review and tabulate all invoices issued to all <u>customers</u> (separately by customer) for fetal tissues sold for the period January 2010 through December 2015. | | | |
| 2. If a customer from III.A.1 above provided productions for invoices received from (or payments made to) same PB, review and tabulate for the same period and reconcile the two. | | | |
| 3. Consider, review documents and identify (if any) other forms of consideration a PB may receive (other than monetary) from a customer for fetal tissues transferred, sold, or donated for the period January 2010 through December 2015. | | | |
| Determine PB's Outflows for Fetal Tissue Procurement | | | |
| 3. Review and tabulate all invoices received by PB from (or payments made to) all Abortion Clinics (separately by clinic) for fetal tissues bought or acquired for the period January 2010 through December 2015. | | | |
| 4. If an Abortion Clinic from III.A.3 above provided productions for invoices issued to (or payments received from) same PB, review and tabulate for the same period and reconcile the two. | | | |

| | Name | Date | W/P Ref |
|---|------|------|---------|
| 5. Consider, review documents and identify (if any) other forms of costs a PB may incur (monetary or otherwise) as a result of handling or trading fetal tissues for the period January 2010 through December 2015. | | | |
| B. For each (or selected) Abortion Clinics (AC) | | | |
| Determine AC's Inflows from Fetal Tissue Sales | | | |
| 1. Review and tabulate all invoices issued to all <u>Procurement Businesses (PBs)</u> (separately by PB) for fetal tissues sold for the period January 2010 through December 2015. | | | |
| 2. If a PB from III.B.1 above provided productions for invoices received from (or payments made to) same AC, review and tabulate for the same period and reconcile the two. | | | |
| 3. Consider, review documents and identify (if any) other forms of consideration an AC may receive (other than monetary) from a PB for fetal tissues transferred, sold, or donated for the period January 2010 through December 2015. | | | |
| Determine AC's Outflows for Fetal Tissue Procurement | | | |
| 1. Consider, review documents and identify (if any) any direct cost or other forms of costs an AC may incur (monetary or otherwise) as a result of handling / trading / donating fetal tissues for the period January 2010 through December 2015. | | | |
| C. For each (or selected) Customers/Researchers (CM) | | | |
| Determine CM's Outflows for Fetal Tissue Procurement | | | |
| 1. Review and tabulate all invoices received by CM from (or payments made to) all PBs (separately by PB) for fetal tissues bought or acquired for the period January 2010 through December 2015. | | | |
| 4. If a PB from III.C.1 above provided productions for invoices issued to (or payments received from) same | | | |

| | Name | Date | W/P Ref |
|--|------|------|---------|
| CM, review and tabulate for the same period and reconcile the two. | | | |
| D. Summary & Results | | | |
| 1. Summarize results from analysis in III.A and assess the extent of valuable consideration involved in the procurement / trade of fetal tissue by the PB. | | | |
| 2. Summarize results from analysis in III.B and assess the extent of valuable consideration involved in the sale of fetal tissue by the AC. | | | |
| 3. Summarize results from analysis in III.C and assess the extent of costs involved in obtaining fetal tissue by the CM. | | | |
| E. Presentation | | | |
| Draft a memo to present result of work | | | |
| | | | |

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To StemExpress, LLC

You are hereby commanded to be and appear before the

Committee on Energy and Commerce

Select Investigative Panel on Infant Lives

of the House of Representatives of the United States at the place, date, and time specified below.

- [x] to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production:

[Redacted]

Date: February 17, 2016

Time: 5:00 p.m.

- [] to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony:

Date:

Time:

- [] to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony:

Date:

Time

To _____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 17th day of February, 2016.

[Signature]
Chairman or Authorized Member

Attest:

[Signature]
Clerk

PROOF OF SERVICE

Subpoena for

StemExpress, LLC

Address c/o M. Amandeep S. Sidhu, Esq., as attorney for StemExpress, LLC,

McDermott Will & Emery, [REDACTED]

before the Committee on Energy and Commerce

Select Investigative Panel on Infant Lives

*U.S. House of Representatives
114th Congress*

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

StemExpress, LLC Schedule

In accordance with the attached schedule, instructions, and definitions, you, StemExpress, LLC ("StemExpress"), are required to produce all documents in unredacted form described below:

- 1) Documents sufficient to show (a) all entities from which StemExpress procured fetal tissue, and (b) all entities to which StemExpress transported, sold, donated, moved, or shipped fetal tissue. Should StemExpress wish to produce a list of such entities referenced in (a) and (b) in lieu of documents, it may do so.
- 2) Documents sufficient to show the name and title of all StemExpress current and former personnel whose responsibilities included procuring, researching, storing, packaging for donation, sale, transport, or disposal of fetal tissue, and the identity, of any supervisory personnel under whom such individuals worked.
- 3) All communications and documents relating to StemExpress employee compensation resulting from or relating to fetal tissue samples procured by current and former StemExpress personnel or other persons or entities that transact business with StemExpress.
- 4) All communications and documents that identify any federal, state, or local government funds received, directly or indirectly, by StemExpress.
- 5) All communications referring or relating to abortion or fetal tissue between StemExpress and any federal, state, or local government officials or employees.
- 6) All communications and documents regarding any direction to StemExpress current or former personnel with respect to the procurement or disposal of fetal tissue.
- 7) All communications and documents that StemExpress utilizes to obtain patient consent for fetal tissue at any clinic. (See instruction below regarding HIPAA.)
- 8) All communications and documents, including but not limited to accounting memoranda, referring or relating to the cost and pricing of fetal tissue by StemExpress.
- 9) All communications and documents, sorted by customer, referring or relating to requests or orders made to StemExpress regarding fetal tissue and the amount paid by each customer to StemExpress.
- 10) All communications and documents referring or relating to the purchase, ownership, or rental by StemExpress of equipment for the storage, disposal, modification, or research of fetal tissue, including equipment price, purchase date, maintenance costs, and records of the depreciation treatment under the tax code of any such equipment.

- 11) All StemExpress banking and accounting documents, sorted by any source of fetal tissue and any customer of StemExpress, that reflect accounts payable and/or funds received that in any way refer or relate to the procurement, sale, donation, or distribution or shipment of fetal tissue.
- 12) Documents sufficient to show any known litigation in which StemExpress is named as a party, including any threatened or anticipated litigation. Should StemExpress wish to produce a list of such litigation, including appropriate docket information, in lieu of documents, it may do so.

Instructions

- 1) The relevant time period for above-referenced documents is January 1, 2011, to the present.
- 2) In complying with this subpoena, you are directed that no document may be redacted in any way except that all patient information protected by American Health Portability and Accountability Act of 1998 (HIPAA) shall be redacted.
- 3) In complying with the subpoena, be apprised that the U.S. House of Representatives and the Committee on Energy and Commerce, Select Investigative Panel on Infant Lives ("Select Panel") do not recognize any of the non-disclosure privileges associated with the common law, with the Freedom of Information Act, with attorney client privilege, or contractual privileges such as non-disclosure agreements.
- 4) In complying with this subpoena, you are directed to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You are also directed to produce records that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as records that you have placed in the temporary possession, custody, or control of any third party.
- 5) No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Select Panel.
- 6) In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
- 7) Each document produced shall be produced in a form that renders the document capable of being copied.
- 8) Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this

subpoena was served. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production

- 9) All documents, or groups of documents, produced shall be identified by the paragraph number in the Attachment to the subpoena to which the documents, or groups of documents, are responsive.
- 10) It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
- 11) If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), you shall consult with Panel staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in Paragraphs 8 and 9 above. Documents produced in an electronic format shall also be produced in searchable format.
- 12) If compliance with the subpoena cannot be made in full, compliance shall be made to the extent possible, and your production shall be accompanied by a written explanation of why full compliance is not possible.
- 13) In the event that a document is withheld on any basis, provide the following information concerning each and every such document withheld from production: (a) the reason the document is not being produced; (b) type of document; (c) general subject matter; (d) date, author and addressee; and (e) relationship of author and addressee to each other.
- 14) If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipient(s)) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
- 15) If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
- 16) This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.

- 17) All documents shall be bates-stamped sequentially and produced sequentially.
- 18) Two sets of responsive records shall be produced, one set to the Majority staff and one set to the Minority staff. The Majority set shall be delivered to Majority staff in Room [REDACTED] and the Minority set shall be delivered to the Minority staff at [REDACTED]. You shall consult with the Select Panel staff regarding the method of delivery prior to sending any material.
- 19) Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Select Panel since the date of receiving the Select Panel's request or in anticipation of receiving the Select Panel's request; and (3) all documents identified during the search that are responsive have been produced to the Select Panel, or identified in a log provided to the Select Panel, as described in Paragraph 13 above.

Definitions

- 1) The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, text messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written,

printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

- 2) The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, officers, directors, contractors, consultants, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
- 3) The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, text message, discussion, release, personal delivery, or otherwise.
- 4) The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
- 5) The terms "entity" means natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
- 6) The term "person or persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
- 7) The term "procure" includes fetal tissue procurement, which means to get, acquire, purchase, appropriate, aggregate, gather, compile, accumulate, collect, or obtain possession or control of fetal tissue by any means, whether solicited or unsolicited, and whether with or without consideration. This includes but is not limited to gaining consent to acquire, physically identifying, separating, dissecting, cultivating, handling, processing, and shipping fetal tissue by any methods or means.

- 8) The term "fetal tissue" means tissue, organs, body parts, and cell lines.
- 9) The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
- 10) The terms "you" and "your" refer to StemExpress, LLC, including any associated foundations whether known by this name or a different name, its past and present officers, directors, employees, consultants, contractors, agents, representatives, subsidiaries, and/or parents.

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

To StemExpress, LLC

You are hereby commanded to be and appear before the
Committee on Energy and Commerce

Select Investigative Panel on Infant Lives

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 316 Ford House Office Building, Washington, DC 20515

Date: April 11, 2016

Time: 5:00 p.m.

- to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To United States Marshals or any authorized staff member

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 29th day of March, 2016.

Attest:

Karen P. Haas
Clerk

Marsha Blackburn
Chairman or Authorized Member

PROOF OF SERVICE

| |
|--|
| Subpoena for <u>StemExpress, LLC</u> |
| Address <u>c/o Amandeep S. Sidhu, as attorney for StemExpress, LLC</u> |
| <u>McDermott, Will & Emery, 500 North Capitol Street, Washington, DC 20001</u> |
| before the <u>Committee on Energy and Commerce</u> |
| <u>Select Investigative Panel on Infant Lives</u> |
| <i>U.S. House of Representatives</i> <i>114th Congress</i> |

| |
|------------------------------|
| Served by (print name) _____ |
| Title _____ |
| Manner of service _____ |
| Date _____ |
| Signature of Server _____ |
| Address _____ |
| _____ |

StemExpress, LLC

In accordance with the attached schedule, instructions, and definitions, you, StemExpress, LLC (“StemExpress”), are required to produce all documents in unredacted form described below:

- 1) All communications and documents referring or relating to Institutional Review Board (IRB), as defined by Title 45 of the Code of Federal Regulations, Part 46, consents for the period of March 29, 2012 through January 26, 2013.
- 2) All communications and documents referring or relating to Biomedical Research Institute of America, BioMed IRB, or BioMed Institutional Review Board.

Instructions

- 1) The relevant time period for above-referenced documents is January 1, 2011, to the present.
- 2) In complying with this subpoena, you are directed that no document may be redacted in any way except that all patient information protected by the American Health Portability and Accountability Act of 1998 (HIPAA) shall be redacted.
- 3) In complying with the subpoena, be apprised that the U.S. House of Representatives and the Committee on Energy and Commerce, Select Investigative Panel on Infant Lives (“Select Panel”) do not recognize any of the non-disclosure privileges associated with the common law, with the Freedom of Information Act, with attorney client privilege, or contractual privileges such as non-disclosure agreements.
- 4) In complying with this subpoena, you are directed to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You are also directed to produce records that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as records that you have placed in the temporary possession, custody, or control of any third party.
- 5) No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Select Panel.

- 6) In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
- 7) Each document produced shall be produced in a form that renders the document capable of being copied.
- 8) Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this subpoena was served. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.
- 9) All documents or groups of documents, produced shall be identified by the paragraph number in the Attachment to the subpoena to which the documents, or groups of documents, are responsive.
- 10) It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
- 11) If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), you shall consult with Select Panel staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in Paragraphs 8 and 9 above. Documents produced in an electronic format shall also be produced in searchable format.
- 12) If compliance with the subpoena cannot be made in full, compliance shall be made to the extent possible, and your production shall be accompanied by a written explanation of why full compliance is not possible.
- 13) In the event that a document is withheld on any basis, provide the following information concerning each and every such document withheld from production: (a) the reason the document is not being produced; (b) type of document; (c) general subject matter; (d) date, author and addressee; and (e) relationship of author and addressee to each other.
- 14) If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipient(s)) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

- 15) If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
- 16) This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
- 17) All documents shall be Bates-stamped sequentially and produced sequentially.
- 18) Two sets of responsive records shall be produced, one set to the Majority staff and one set to the Minority staff. The Majority set shall be delivered to Majority staff in Room 316 of the Ford House Office Building and the Minority set shall be delivered to the Minority staff at 361 Ford House Office Building. You shall consult with the Select Panel staff regarding the method of delivery prior to sending any material.
- 19) Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Select Panel since the date of receiving the Select Panel's request or in anticipation of receiving the Select Panel's request, and (3) all documents identified during the search that are responsive have been produced to the Select Panel, identified in a log provided to the Select Panel, as described in Paragraph 13 above.

Definitions

- 1) The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, text messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and

work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

- 2) The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, officers, directors, contractors, consultants, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
- 3) The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, text message, discussion, release, personal delivery, or otherwise.
- 4) The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
- 5) The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
- 6) The term "StemExpress" includes StemExpress, LLC and any affiliates or related entities, all referred to herein, both individually and collectively, as "StemExpress".

- 7) The term "fetal tissue" means tissue, organs, body parts, and cell lines.
- 8) The term "study" or "proposal" means any work or regime of biomedical research that led to a report or memoranda, whether published or not.
- 9) The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
- 10) The terms "you" and "your" refer to StemExpress, as defined herein, whether known by this name or a different name, its past and present officers, directors, employees, consultants, contractors, agents, representatives, subsidiaries, and/or parents.

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Cate Dyer

You are hereby commanded to be and appear before the

Committee on Energy and Commerce

Select Investigative Panel on Infant Lives

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: [REDACTED]

Date: April 11, 2016

Time: 5:00 p.m.

- to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To United States Marshals or any authorized staff member

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 29th day of March, 2016.

Attest:

Karen P. Haas
Clerk

[Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for
 Cate Dyer

Address c/o Amandeep S. Sidhu, McDermott, Will & Emery

McDermott, Will & Emery [REDACTED]

before the Committee on Energy and Commerce

Select Investigative Panel on Infant Lives

U.S. House of Representatives
114th Congress

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

Cate Dyer

In accordance with the attached schedule, instructions, and definitions, you, Cate Dyer, CEO of StemExpress, LLC ("StemExpress"), are required to produce all documents in unredacted form described below:

- 1) Documents sufficient to show the name(s) of all persons who serve as StemExpress's Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s). You may provide a list identifying such individuals and their corresponding positions in lieu of producing documents.
- 2) All communications and documents sufficient to show accounts payable and accounts receivable concerning in any way the sale, storage, purchase, or transport of fetal tissue; received by or sent by StemExpress's Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s).

Instructions

- 1) The relevant time period for above-referenced documents is January 1, 2011, to the present.
- 2) In complying with this subpoena, you are directed that no document may be redacted in any way except that that all patient information protected by the American Health Portability and Accountability Act of 1998 (HIPAA) shall be redacted.
- 3) In complying with the subpoena, be apprised that the U.S. House of Representatives and the Committee on Energy and Commerce, Select Investigative Panel on Infant Lives ("Select Panel") do not recognize any of the non-disclosure privileges associated with the common law, with the Freedom of Information Act, with attorney-client privilege, or contractual privileges such as non-disclosure agreements.
- 4) In complying with this subpoena, you are directed to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You are also directed to produce records that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as records that you have placed in the temporary possession, custody, or control of any third party.
- 5) No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Select Panel.

- 6) In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
- 7) Each document produced shall be produced in a form that renders the document capable of being copied.
- 8) Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this subpoena was served. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.
- 9) All documents or groups of documents, produced shall be identified by the paragraph number in the Attachment to the subpoena to which the documents, or groups of documents, are responsive.
- 10) It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
- 11) If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), you shall consult with Select Panel staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in Paragraphs 8 and 9 above. Documents produced in an electronic format shall also be produced in searchable format.
- 12) If compliance with the subpoena cannot be made in full, compliance shall be made to the extent possible, and your production shall be accompanied by a written explanation of why full compliance is not possible.
- 13) In the event that a document is withheld on any basis, provide the following information concerning each and every such document withheld from production: (a) the reason the document is not being produced; (b) type of document; (c) general subject matter; (d) date, author and addressee; and (e) relationship of author and addressee to each other.
- 14) If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipient(s)) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

- 15) If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
- 16) This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
- 17) All documents shall be Bates-stamped sequentially and produced sequentially.
- 18) Two sets of responsive records shall be produced, one set to the Majority staff and one set to the Minority staff. The Majority set shall be delivered to Majority staff in Room [REDACTED] and the Minority set shall be delivered to the Minority staff at [REDACTED]. You shall consult with the Select Panel staff regarding the method of delivery prior to sending any material.
- 19) Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Select Panel since the date of receiving the Select Panel's request or in anticipation of receiving the Select Panel's request, and (3) all documents identified during the search that are responsive have been produced to the Select Panel, identified in a log provided to the Select Panel, as described in Paragraph 13 above.

Definitions

- 1) The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, text messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and

work sheets. The term “document” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “document” also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

- 2) The term “documents in your possession, custody or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, officers, directors, contractors, consultants, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
- 3) The term “communication” means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, text message, discussion, release, personal delivery, or otherwise.
- 4) The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
- 5) The terms “person” or “persons” mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
- 6) The term “StemExpress” includes StemExpress, LLC and any affiliates or related entities, its past and present officers, directors, employees, consultants, contractors,

agents, representatives, subsidiaries, and/or parents, all referred to herein, both individually and collectively, as “StemExpress”.

- 7) The terms “referring” or “relating,” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
- 8) The terms “you” and “your” refer to Cate Dyer, CEO of StemExpress, as defined herein, whether known by this name or a different name.

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Scinto Group, LLP

You are hereby commanded to be and appear before the
Committee on Energy and Commerce

Select Investigative Panel on Infant Lives

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: [REDACTED]

Date: May 11, 2016

Time: 5:00 p.m.

- to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To _____
_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 29th day of April, 2016.

[Signature]
Chairman or Authorized Member

Attest:

[Signature]

Clerk

PROOF OF SERVICE

Subpoena for

Scinto Group, LLP

Address c/o David Scinto, Partner, [REDACTED]

[REDACTED]
before the Committee on Energy and Commerce

Select Investigative Panel on Infant Lives

*U.S. House of Representatives
114th Congress*

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

Scinto Group, LLP

In accordance with the attached schedule, instructions, and definitions, you, Scinto Group, LLP (“Scinto”), are required to produce all documents in unredacted form described below:

- 1) All communications and documents referring or relating to StemExpress, LLC, or StemExpress Foundation (collectively known as “StemExpress”).
- 2) Documents sufficient to show all institutions or entities to which StemExpress donated or provided fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. You may provide a list of such institutions and entities in lieu of producing these documents.
- 3) Copies of all invoices (by month and year), reflecting the billing that StemExpress issued to all institutions or entities to which StemExpress donated or provided fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 4) Documents sufficient to show all institutions or entities from which StemExpress obtained fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. You may provide a list of such institutions and entities in lieu of producing these documents.
- 5) Copies of all invoices (by month and year) reflecting the billing or payment of funds for fetal tissues obtained by StemExpress for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 6) A copy of any chart of accounts for StemExpress, including but not limited to account descriptions from any financial recording system relating to StemExpress.
- 7) StemExpress’ end of year trial balance report and trial balance details for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 8) All documents reflecting StemExpress’ statement of revenues (i.e., a breakdown by product categories) for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 9) All documents reflecting StemExpress’ record of costs and expenses (i.e., a breakdown by operations, including fetal tissue acquisition) for administrative costs and expenses as well as compensation and benefits, for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Where applicable, records should include identification of vendors and descriptions of expenses.

- 10) StemExpress' balance sheets for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available.
- 11) StemExpress' income statements, including but not limited to any profit and loss statements, statements of operations and statements of activities for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available.
- 12) Copies of StemExpress' filed tax returns for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 13) All StemExpress bank statements from any financial institution where StemExpress has maintained an account for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 14) Documents sufficient to show how StemExpress calculates the cost of a fetal tissue and all factors applied in determining pricing of fetal tissue. In lieu of these documents, you may provide a written explanation.
- 15) Documents sufficient to show StemExpress' cost of production and revenue from the following products: CD34+Stem/Progenitor Cells; CD36+ Erythroid Progenitor; CD133+ Stem/ Progenitor Cells; Fetal Fiver Mononuclear Cells.

Instructions

- 1) The relevant time period for above-referenced documents is January 1, 2010, to the present.
- 2) If there are no responsive documents, provide a written explanation detailing why no such documents exist.
- 3) In complying with this subpoena, you are directed that no document may be redacted in any way except that that all patient information protected by American Health Portability and Accountability Act of 1998 (HIPAA) shall be redacted.
- 4) In complying with the subpoena, be apprised that the U.S. House of Representatives and the Committee on Energy and Commerce, Select Investigative Panel on Infant Lives ("Select Panel") do not recognize any of the non-disclosure privileges associated with the common law, with the Freedom of Information Act, with attorney client privilege, or contractual privileges such as non-disclosure agreements.
- 5) In complying with this subpoena, you are directed to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or

present agents, employees, and representatives acting on your behalf. You are also directed to produce records that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as records that you have placed in the temporary possession, custody, or control of any third party.

- 6) No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Select Panel.
- 7) In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
- 8) Each document produced shall be produced in a form that renders the document capable of being copied.
- 9) Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this subpoena was served. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production
- 10) All documents or groups of documents, produced shall be identified by the paragraph number in the Attachment to the subpoena to which the documents, or groups of documents, are responsive.
- 11) It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
- 12) If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), you shall consult with Select Panel staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in Paragraph 8 and 9 above. Documents produced in an electronic format shall also be produced in searchable format.
- 13) If compliance with the subpoena cannot be made in full, compliance shall be made to the extent possible, and your production shall be accompanied by a written explanation of why full compliance is not possible.
- 14) In the event that a document is withheld on any basis, provide the following information concerning each and every such document withheld from production: (a) the reason the

document is not being produced; (b) type of document; (c) general subject matter; (d) date, author and addressee; and (e) relationship of author and addressee to each other.

- 15) If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipient(s)) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
- 16) If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
- 17) This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
- 18) All documents shall be bates-stamped sequentially and produced sequentially.
- 19) Two sets of responsive records shall be produced, one set to the Majority staff and one set to the Minority staff. The Majority set shall be delivered to Majority staff in [REDACTED] and the Minority set shall be delivered to the Minority staff at [REDACTED]. You shall consult with the Select Panel staff regarding the method of delivery prior to sending any material.
- 20) Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Select Panel since the date of receiving the Select Panel's request or in anticipation of receiving the Select Panel's request, and (3) all documents identified during the search that are responsive have been produced to the Select Panel, identified in a log provided to the Select Panel, as described in Paragraph 13 above.

Definitions

- 1) The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, accounting and financial records of any kind (including

checks (front and back), wire transfers, cash or check payments or receipts, and check requests), working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, text messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

- 2) The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, officers, directors, contractors, consultants, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
- 3) The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, text message, discussion, release, personal delivery, or otherwise.
- 4) The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which

might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

- 5) The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
- 6) The term "StemExpress" includes StemExpress, LLC and any affiliates or related entities, all referred to herein, both individually and collectively, as "StemExpress".
- 7) The term "fetal tissue" means tissue, organs, body parts, and cell lines.
- 8) The term "study" or "proposal" means any work or regime of biomedical research that led to a report or memoranda, whether published or not.
- 9) The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
- 10) The terms "you" and "your" refer to Scinto Group, LLP, whether known by this name or a different name, its past and present officers, directors, employees, consultants, contractors, agents, representatives, subsidiaries, and/or parents.

Tallmer, Matthew

From: Murphy, Kevin M. <[REDACTED]>
Sent: Wednesday, June 15, 2016 12:00 PM
To: Tallmer, Matthew
Cc: Bell, March
Subject: RE: Scinto Group Production

Matt,

This confirms my voice mail of this morning, and our subsequent call.

StemExpress has now told me definitively that it does not waive any available and applicable privileges or confidentiality rights in regard to the records related to StemExpress that are in the possession of my client, Scinto Group, and that StemExpress holds Scinto Group accountable to observe and protect those privileges and confidentiality rights. As you know, because Scinto is a CPA firm and tax preparer for StemExpress, there are potentially applicable privileges and confidentiality statutes, under the Internal Revenue Code and related provisions, under the California Business & Professions Code and Tax Code, and under professional standards. I understand that you probably do not agree that any of those laws or provisions would ultimately be found by a court to be applicable, but from our reading of the laws and provisions, we believe that the privilege and confidentiality laws/provisions could be found applicable. I have also reviewed correspondence and a memorandum from the Democratic members of the Select Investigative Panel which assert that the subpoena (and others) was issued in violation of House rules. I have also reviewed articles (including the comprehensive articles by the Congressional Research Service) and court cases regarding enforcement of subpoenas from a House committee or subcommittee or investigative committee. My conclusion, based upon a reading of all these materials, and in light of the position conveyed to me by StemExpress, is that Scinto Group has an obligation to object to the subpoena.

Also, as I noted below, I suggest that the CPA / tax preparer privilege and confidentiality provisions would not apply if the Select Panel were to simply subpoena the same records directly from StemExpress. As I have said, other than some internal notes by the CPA's during the preparation of tax returns and discussions with the client, all the records that you seek were either provided to Scinto by StemExpress, or else they are final products (e.g. tax returns and schedules) that Scinto provided to StemExpress – so, all the relevant materials that you seek from Scinto are in the possession of StemExpress.

In our discussion today, you said that you want from me a formal, written statement of the objections and the grounds for the objections. I will work on that and, as discussed, intend to send it to you by early next week. I understand from our discussion that this will be satisfactory to close this matter.

Kevin Murphy

Kevin M. Murphy
Carr Maloney P.C.

[REDACTED]


CARR MALONEY PC

Offices in Washington, DC | Maryland | Virginia

This message is intended for the individual(s) or entity(ies) named in the header that appears either at the beginning or at the conclusion of all material in this message (depending on your e-mail software). This message may contain material that is privileged or confidential. If you are not the intended recipient, please do not read, copy, use or disclose this communication to others; also please notify the sender by replying to this message, and then delete it from your system. Thank you.

From: Murphy, Kevin M.
Sent: Saturday, June 11, 2016 4:03 PM
To: Tallmer, Matthew
Cc: Bell, March
Subject: RE: Scinto Group Production

Matt,

Sorry for the delay in responding to your email. I was tied up most of this past week. I will call you by Wednesday, as explained below.

I have been having back and forth discussion with StemExpress, including several calls this past week, about whether or not they will sign a consent and waiver of any potentially applicable privileges or confidentiality. I do not yet have a final answer from them, but it appears that they will probably not sign. I am going to send them a final request and consent form on Monday and look for a response by Tuesday. If they do not consent, I will speak with you about our position and proposed next steps. In that regard, having reviewed the Scinto records, it appears that they are largely documents that came from StemExpress. (And, as I said before, none of them are at a level of detail that indicate profit/loss, revenue/expense specifically on fetal tissue work). Therefore, it seems that the direct way for you to get the records that you want, without having to deal with the privilege and confidentiality concerns that exist when you request them from a CPA and tax preparer, is to subpoena the same records from StemExpress. Perhaps you have done that or will do it soon?

I will talk to you by Wednesday.

Kevin Murphy

From: Tallmer, Matthew 
Sent: Wednesday, June 08, 2016 8:50 AM
To: Murphy, Kevin M.
Cc: Bell, March
Subject: Scinto Group Production

Mr. Maloney:

On May 26, 2016, you informed the Panel via email that you had started your initial review of documents from the Scinto Group. As you are aware, the subpoena required a production date of May 11, 2016, which is nearly one month ago. Please produce the documents demanded under the subpoena.

Matthew Tallmer
Investigator
Elect Investigative Panel


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

[REDACTED]

September 8, 2016

DELIVERED VIA EMAIL

Mr. Kevin M. Murphy
Carr Maloney PC

[REDACTED]

Dear Mr. Murphy:

I am in receipt of your letter dated June 28, 2016, in which Scinto Group asserts several arguments that it alleges excuse compliance with a lawful congressional subpoena issued by the Select Investigative Panel. For the reasons stated below, your reasoning is hereby rejected and thus, the Select Panel will proceed to schedule a Business Meeting to consider a Contempt Report describing your refusal and will vote on whether to refer that Report to the full House of Representative for consideration.

On October 7, 2015, the House voted to enact House Resolution 461, which established the Select Investigative Panel and “authorized and directed [it] to conduct a full and complete investigation and study and issue a final report of its findings . . . regarding (1) medical procedures and business practices used by entities involved in fetal tissue procurement; (2) any other relevant matters with respect to fetal tissue procurement; . . . and (6) any changes in law or regulation necessary as a result of any findings made under [those investigations and studies].”¹

In House Report 114-288 on H. Res. 461, the authority of the Panel to issue subpoenas is summarized. “Section 4 provides that rule XI of the Rules of the House of Representatives and the rules of the Committee on Energy and Commerce shall apply to the select panel in the same manner as any other subcommittee, except that the chair of the select panel (1) is authorized to authorize and issue subpoenas, including for the purpose of taking depositions; (2) may order the taking of depositions by members or counsel of the select panel and that any deposition taken pursuant to this authority will be governed by the regulations issued by the chair of the Committee on Rules; and (3) may recognize members or staff to question witnesses for periods

¹ H. Res. 461, Section 3.

longer than five minutes as though pursuant to clause 2(j)(2) of rule XI.” The Chairman of the Panel is required to consult to the extent practicable with the ranking minority but need not gain approval prior to issuance of a subpoena.

Pursuant to the authority delegated to it under House Resolution 461, the Select Investigative Panel is investigating whether entities that procure fetal tissue are using loopholes in federal law or engaging in business practices that have the effect of undermining the purpose of laws prohibiting the interstate transfer of any fetal tissue for valuable consideration. As part of that investigation, the Panel is examining whether 42 U.S.C. § 289g-2 is effective, or needs to be amended to better achieve the legislative goals of the statute. Under Title 42 U.S.C. § 289g-2, which is, at its heart, an accounting statute, it is unlawful for any person to knowingly acquire, receive, or otherwise transfer any fetal tissue for valuable consideration if the transfer affects interstate commerce. The term “valuable consideration” does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

Through publicly available information and the Select Investigative Panel’s investigation, the Panel identified StemExpress, LLC (“StemExpress”), as an entity that procured fetal tissue from abortion clinics and transferred it to researchers. In accordance with its authorization under House Resolution 461, and consistent with its interest in examining whether any changes in federal laws or regulations are necessary as a result of its investigation, the Select Investigative Panel sought documents from StemExpress. As a result of StemExpress’ failure to comply fully with the Panel’s voluntary request for documents, the Panel was forced to subpoena StemExpress, its CEO, Ms. Catherine Spears Dyer, and its outside accountant, Scinto Group, LLP (“Scinto”). Despite many accommodations and much negotiation with the subpoena recipients, StemExpress and Ms. Dyer willfully and inexcusably have refused to comply with important aspects of the Panel’s congressional subpoenas. Further, after refusing to comply with the Panel’s subpoena, StemExpress also has willfully and successfully attempted to convince its outside accountant, Scinto, to similarly refuse any compliance with the Panel’s subpoena.

Due to StemExpress’ and Ms. Dyer’s failure to comply with the Panel’s subpoenas and their continual refusal to provide accounting information directly pertinent to the Panel’s investigation and study, conducted pursuant to House Resolution 461, the Panel was forced to subpoena Scinto, StemExpress’ outside accountant. Scinto has indicated that it consulted with StemExpress counsel and that StemExpress expressly instructed Scinto not to produce its financial records in response to the Panel’s subpoena.

Scinto Group, the accountant for StemExpress, states that it will observe and protect the “applicable privileges and confidentiality rights that it [StemExpress] has in its documents.” Scinto offers the explanation that based upon communications from StemExpress it does not want exposure to civil or criminal liability should it violate StemExpress’ privileges or confidentiality. Then, Scinto Group proposes a remarkable and novel solution: the Panel should subpoena the “same records” from StemExpress as a way to negate the applicability to Scinto of a California privilege and confidentiality statute. Scinto Group’s proposal that the Panel should seek documents from one noncomplying entity to obtain compliance from another noncomplying entity when one is the privileged client of the other sullies the integrity of Congress, asking it to

play musical chairs, hoping that someone will someday comply with a subpoena. “[I]t is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. **It is their unremitting obligation to respond to subpoenas** [emphasis added], to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation.” *Watkins*, 354 U.S. at 187-88.

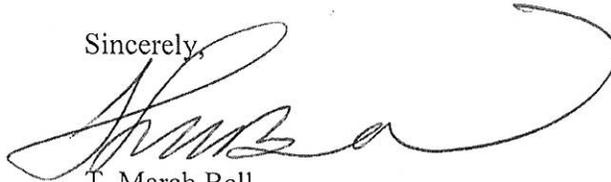
Scinto Group next questions the applicability of C.F.R. §7216-2(f)(3) which provides a clear congressional subpoena exception to 26 U.S.C. §7216 and 26 U.S.C. §6713 by asserting that the regulation somehow does not apply because the full House of Representatives has not acted or because the minority does not agree with the issuance of the subpoena to Scinto Group. As noted above, H. Res. 461 conferred subpoena authority upon the Chairman of the Select Panel. Thus, the House has acted.

Scinto Group also relies upon a novel grammatical reading of a California statute, (CA Code, Bus. & Prof., §5063.3) to propose that it cannot disclose the information the Congress seeks. Scinto cites the phrase “enforceable by a court” (an exception to non-disclosure rules) to suggest that since the House of Representatives has not yet secured a court order to enforce its subpoena that its subpoena is outside the definition of “enforceable by a court” thus excusing Scinto from compliance. Counsel for Scinto could easily research the history of Congress enforcing its subpoenas in federal court to realize this argument is without merit.

Scinto also suggests that attorney-client privilege somehow extends to accountant client privilege thereby excusing its compliance. Since as a matter of law Congress does not recognize either privilege this argument is without merit.

Should the Panel fail to obtain compliance from Scinto Group, the Chairman of the Select Investigative Panel will recommend that Scinto be held in contempt for their willful failure to fully comply with the Panel’s subpoenas issued to them. The Chairman will also recommend that the Speaker of the House of Representatives, pursuant to 2 U.S.C. §§ 192 and 194, certify this report of the Select Investigative Panel to the United States Attorney for the District of Columbia, and that Scinto Group be proceeded against in the manner and form provided by law.

Sincerely,



T. March Bell
Chief Counsel and Staff Director
Select Investigative Panel of
the Committee on Energy and Commerce

cc: Heather Sawyer
Democratic Staff Director
Select Investigative Panel

Kevin M. Murphy

Admitted in MD & DC

September 16, 2016

Via Email Only to: [REDACTED]

T. March Bell, Esq.
Chief Counsel and Staff Director
Select Investigative Panel on Infant Lives
2125 Rayburn House Office Building
Washington, DC 20510

Re: Subpoena to Scinto Group, LLP

Dear Mr. Bell:

As you know, this law firm represents the CPA firm, Scinto Group, LLP. This letter is in response to your letter to me of September 8, 2016, in which you described an intention to pursue contempt resolutions and referral against Scinto Group, LLP.

First, let me reiterate that, if not for the potential application of the privilege and/or confidentiality laws, Scinto Group LLP would be willing and able to comply with a valid subpoena from the Select Investigative Panel. However, in light of the potential application of those laws, under the current circumstances, Scinto Group is not in a position to unilaterally respond to the subpoena with the requested documents, absent client consent. I explained in my letter of June 28, 2016, in some detail, our specific legal analysis in that regard. I believe that the status of our discussion is, at most, a difference of opinion on the scope and interpretation of privilege and confidentiality laws. However, because your letter describes an intention to pursue contempt proceedings, it appears that you do not see this as a valid difference of opinion about the applicability of privilege and confidentiality laws and subpoena procedure. Nevertheless, I believe there is merit to further discussion of this matter, and so I ask you to please review this letter and respond.

Contrary to the suggestion in your letter, Scinto Group had no intent to “sully the integrity of Congress” when it suggested to you a method to resolve the privilege and confidentiality legal hurdles. To the contrary, we simply presented our view of the legal impediments that we face with respect to the subpoena, and then we proposed what seemed to be a perfectly reasonable and logical solution to the hurdles presented by the privilege and confidentiality laws – the Select Panel could issue a subpoena for the same records directly to StemExpress, since the records that Scinto Group has in its files were almost entirely provided to it by StemExpress. On the issue of that suggestion, we are a bit confused by some of the discussion in your letter, and we ask for clarification. Your

T. March Bell, Esq.
September 16, 2016
Page Two

letter appears to suggest in one part (p.2, ¶3) that StemExpress has received and failed to comply with a subpoena for the tax, financial statement, ledger and expense records that were covered by the subpoena to Scinto Group. But, in other parts of your letter (p.2, ¶2 and ¶4), it appears to suggest that there has not yet been a subpoena to StemExpress that covers those specific requests, and rather there have only been voluntary requests to StemExpress for those items. Our understanding is that StemExpress has not received a subpoena for those specific tax, financial statement and related items that were requested in the subpoena to Scinto Group. If that understanding is correct, then it still seems clear to me that our suggestion remains the most efficient means to eliminate the privilege and confidentiality problems that are presented by the subpoena to Scinto Group. If that understanding is incorrect, please let me know.

In regard to another comment in your letter, you say that “Congress does not recognize either privilege (attorney-client or accountant-client)”. However, that is not my understanding of applicable rules and precedent, as discussed in footnote 1 of my letter and in CRS Report 7-5700. If you are aware of some applicable legal precedent that supports that proposition in your letter, would you please provide it, so that I can consider it as we further address this matter?

Also, your letter says that because H. Res. 461 conferred subpoena authority upon the Chair of the Select Investigative Panel, “the House has acted.” It sounds as though you are taking the position that when a committee or panel is authorized to issue subpoenas, there are no limits to the scope or terms of the subpoenas it issues, and no circumstances under which such subpoenas could be questioned or invalidated, either for purposes of procedural deficiencies, application of privilege or confidentiality statutes, or the like. Am I reading your position correctly? If so, I again ask if you have legal precedent for that position, and if so would you please provide it; because, as I read the various cases discussed in CRS Report 7-5700, that is not my understanding of prior precedent in regard to congressional subpoenas. But, I am willing to review and reconsider based on what you may reference to me.

I also ask that you tell me what is the process that you anticipate, and the timing of that process. I presume, based on the fact that your letter of September 8 was sent more than two months after my letter to you of June 28, that there is not an intent to rush to initiate proceedings aimed at a contempt resolution until we have had at least a reasonable time to consider and further discuss this matter in light of your letter of September 8 and potential further communication. But, if that is not correct, and if there is an intent to move on some expedited time basis, please let me know the expected timing.

I see that your letter references a process that would include a Business Meeting of the Select Investigative Panel and a Report to the full House for consideration. But, then your letter also refers to the Chair of the Select Investigative Panel certifying “this report”, presumably a

Tallmer, Matthew

From: Murphy, Kevin M. [REDACTED]
Sent: Wednesday, June 15, 2016 12:00 PM
To: Tallmer, Matthew
Cc: Bell, March
Subject: RE: Scinto Group Production

Matt,

This confirms my voice mail of this morning, and our subsequent call.

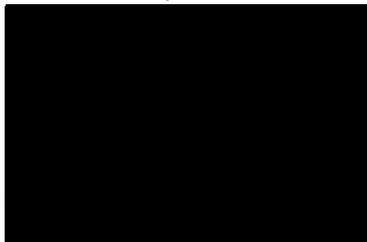
StemExpress has now told me definitively that it does not waive any available and applicable privileges or confidentiality rights in regard to the records related to StemExpress that are in the possession of my client, Scinto Group, and that StemExpress holds Scinto Group accountable to observe and protect those privileges and confidentiality rights. As you know, because Scinto is a CPA firm and tax preparer for StemExpress, there are potentially applicable privileges and confidentiality statutes, under the Internal Revenue Code and related provisions, under the California Business & Professions Code and Tax Code, and under professional standards. I understand that you probably do not agree that any of those laws or provisions would ultimately be found by a court to be applicable, but from our reading of the laws and provisions, we believe that the privilege and confidentiality laws/provisions could be found applicable. I have also reviewed correspondence and a memorandum from the Democratic members of the Select Investigative Panel which assert that the subpoena (and others) was issued in violation of House rules. I have also reviewed articles (including the comprehensive articles by the Congressional Research Service) and court cases regarding enforcement of subpoenas from a House committee or subcommittee or investigative committee. My conclusion, based upon a reading of all these materials, and in light of the position conveyed to me by StemExpress, is that Scinto Group has an obligation to object to the subpoena.

Also, as I noted below, I suggest that the CPA / tax preparer privilege and confidentiality provisions would not apply if the Select Panel were to simply subpoena the same records directly from StemExpress. As I have said, other than some internal notes by the CPA's during the preparation of tax returns and discussions with the client, all the records that you seek were either provided to Scinto by StemExpress, or else they are final products (e.g. tax returns and schedules) that Scinto provided to StemExpress – so, all the relevant materials that you seek from Scinto are in the possession of StemExpress.

In our discussion today, you said that you want from me a formal, written statement of the objections and the grounds for the objections. I will work on that and, as discussed, intend to send it to you by early next week. I understand from our discussion that this will be satisfactory to close this matter.

Kevin Murphy

Kevin M. Murphy
Carr Maloney P.C.





Offices in Washington, DC | Maryland | Virginia

This message is intended for the individual(s) or entity(ies) named in the header that appears either at the beginning or at the conclusion of all material in this message (depending on your e-mail software). This message may contain material that is privileged or confidential. If you are not the intended recipient, please do not read, copy, use or disclose this communication to others; also please notify the sender by replying to this message, and then delete it from your system. Thank you.

From: Murphy, Kevin M.
Sent: Saturday, June 11, 2016 4:03 PM
To: Tallmer, Matthew
Cc: Bell, March
Subject: RE: Scinto Group Production

Matt,

Sorry for the delay in responding to your email. I was tied up most of this past week. I will call you by Wednesday, as explained below.

I have been having back and forth discussion with StemExpress, including several calls this past week, about whether or not they will sign a consent and waiver of any potentially applicable privileges or confidentiality. I do not yet have a final answer from them, but it appears that they will probably not sign. I am going to send them a final request and consent form on Monday and look for a response by Tuesday. If they do not consent, I will speak with you about our position and proposed next steps. In that regard, having reviewed the Scinto records, it appears that they are largely documents that came from StemExpress. (And, as I said before, none of them are at a level of detail that indicate profit/loss, revenue/expense specifically on fetal tissue work). Therefore, it seems that the direct way for you to get the records that you want, without having to deal with the privilege and confidentiality concerns that exist when you request them from a CPA and tax preparer, is to subpoena the same records from StemExpress. Perhaps you have done that or will do it soon?

I will talk to you by Wednesday.

Kevin Murphy

From: Tallmer, Matthew [mailto: [REDACTED]]
Sent: Wednesday, June 08, 2016 8:50 AM
To: Murphy, Kevin M.
Cc: Bell, March
Subject: Scinto Group Production

Mr. Maloney:

On May 26, 2016, you informed the Panel via email that you had started your initial review of documents from the Scinto Group. As you are aware, the subpoena required a production date of May 11, 2016, which is nearly one month ago. Please produce the documents demanded under the subpoena.

Matthew Tallmer
Investigator
Elect Investigative Panel
[REDACTED]

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

September 8, 2016

DELIVERED VIA EMAIL

Mr. Kevin M. Murphy
Carr Maloney PC

Dear Mr. Murphy:

I am in receipt of your letter dated June 28, 2016, in which Scinto Group asserts several arguments that it alleges excuse compliance with a lawful congressional subpoena issued by the Select Investigative Panel. For the reasons stated below, your reasoning is hereby rejected and thus, the Select Panel will proceed to schedule a Business Meeting to consider a Contempt Report describing your refusal and will vote on whether to refer that Report to the full House of Representative for consideration.

On October 7, 2015, the House voted to enact House Resolution 461, which established the Select Investigative Panel and “authorized and directed [it] to conduct a full and complete investigation and study and issue a final report of its findings . . . regarding (1) medical procedures and business practices used by entities involved in fetal tissue procurement; (2) any other relevant matters with respect to fetal tissue procurement; . . . and (6) any changes in law or regulation necessary as a result of any findings made under [those investigations and studies].”¹

In House Report 114-288 on H. Res. 461, the authority of the Panel to issue subpoenas is summarized. “Section 4 provides that rule XI of the Rules of the House of Representatives and the rules of the Committee on Energy and Commerce shall apply to the select panel in the same manner as any other subcommittee, except that the chair of the select panel (1) is authorized to authorize and issue subpoenas, including for the purpose of taking depositions; (2) may order the taking of depositions by members or counsel of the select panel and that any deposition taken pursuant to this authority will be governed by the regulations issued by the chair of the Committee on Rules; and (3) may recognize members or staff to question witnesses for periods

¹ H. Res. 461, Section 3.

longer than five minutes as though pursuant to clause 2(j)(2) of rule XI.” The Chairman of the Panel is required to consult to the extent practicable with the ranking minority but need not gain approval prior to issuance of a subpoena.

Pursuant to the authority delegated to it under House Resolution 461, the Select Investigative Panel is investigating whether entities that procure fetal tissue are using loopholes in federal law or engaging in business practices that have the effect of undermining the purpose of laws prohibiting the interstate transfer of any fetal tissue for valuable consideration. As part of that investigation, the Panel is examining whether 42 U.S.C. § 289g-2 is effective, or needs to be amended to better achieve the legislative goals of the statute. Under Title 42 U.S.C. § 289g-2, which is, at its heart, an accounting statute, it is unlawful for any person to knowingly acquire, receive, or otherwise transfer any fetal tissue for valuable consideration if the transfer affects interstate commerce. The term “valuable consideration” does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

Through publicly available information and the Select Investigative Panel’s investigation, the Panel identified StemExpress, LLC (“StemExpress”), as an entity that procured fetal tissue from abortion clinics and transferred it to researchers. In accordance with its authorization under House Resolution 461, and consistent with its interest in examining whether any changes in federal laws or regulations are necessary as a result of its investigation, the Select Investigative Panel sought documents from StemExpress. As a result of StemExpress’ failure to comply fully with the Panel’s voluntary request for documents, the Panel was forced to subpoena StemExpress, its CEO, Ms. Catherine Spears Dyer, and its outside accountant, Scinto Group, LLP (“Scinto”). Despite many accommodations and much negotiation with the subpoena recipients, StemExpress and Ms. Dyer willfully and inexcusably have refused to comply with important aspects of the Panel’s congressional subpoenas. Further, after refusing to comply with the Panel’s subpoena, StemExpress also has willfully and successfully attempted to convince its outside accountant, Scinto, to similarly refuse any compliance with the Panel’s subpoena.

Due to StemExpress’ and Ms. Dyer’s failure to comply with the Panel’s subpoenas and their continual refusal to provide accounting information directly pertinent to the Panel’s investigation and study, conducted pursuant to House Resolution 461, the Panel was forced to subpoena Scinto, StemExpress’ outside accountant. Scinto has indicated that it consulted with StemExpress counsel and that StemExpress expressly instructed Scinto not to produce its financial records in response to the Panel’s subpoena.

Scinto Group, the accountant for StemExpress, states that it will observe and protect the “applicable privileges and confidentiality rights that it [StemExpress] has in its documents.” Scinto offers the explanation that based upon communications from StemExpress it does not want exposure to civil or criminal liability should it violate StemExpress’ privileges or confidentiality. Then, Scinto Group proposes a remarkable and novel solution: the Panel should subpoena the “same records” from StemExpress as a way to negate the applicability to Scinto of a California privilege and confidentiality statute. Scinto Group’s proposal that the Panel should seek documents from one noncomplying entity to obtain compliance from another noncomplying entity when one is the privileged client of the other sullies the integrity of Congress, asking it to

play musical chairs, hoping that someone will someday comply with a subpoena. “[I]t is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. **It is their unremitting obligation to respond to subpoenas** [emphasis added], to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation.” *Watkins*, 354 U.S. at 187-88.

Scinto Group next questions the applicability of C.F.R. §7216-2(f)(3) which provides a clear congressional subpoena exception to 26 U.S.C. §7216 and 26 U.S.C. §6713 by asserting that the regulation somehow does not apply because the full House of Representatives has not acted or because the minority does not agree with the issuance of the subpoena to Scinto Group. As noted above, H. Res. 461 conferred subpoena authority upon the Chairman of the Select Panel. Thus, the House has acted.

Scinto Group also relies upon a novel grammatical reading of a California statute, (CA Code, Bus. & Prof., §5063.3) to propose that it cannot disclose the information the Congress seeks. Scinto cites the phrase “enforceable by a court” (an exception to non-disclosure rules) to suggest that since the House of Representatives has not yet secured a court order to enforce its subpoena that its subpoena is outside the definition of “enforceable by a court” thus excusing Scinto from compliance. Counsel for Scinto could easily research the history of Congress enforcing its subpoenas in federal court to realize this argument is without merit.

Scinto also suggests that attorney-client privilege somehow extends to accountant client privilege thereby excusing its compliance. Since as a matter of law Congress does not recognize either privilege this argument is without merit.

Should the Panel fail to obtain compliance from Scinto Group, the Chairman of the Select Investigative Panel will recommend that Scinto be held in contempt for their willful failure to fully comply with the Panel’s subpoenas issued to them. The Chairman will also recommend that the Speaker of the House of Representatives, pursuant to 2 U.S.C. §§ 192 and 194, certify this report of the Select Investigative Panel to the United States Attorney for the District of Columbia, and that Scinto Group be proceeded against in the manner and form provided by law.

Sincerely,

T. March Bell
Chief Counsel and Staff Director
Select Investigative Panel of
the Committee on Energy and Commerce

cc: Heather Sawyer
Democratic Staff Director
Select Investigative Panel

Kevin M. Murphy

September 16, 2016

Via Email Only to: [REDACTED]

T. March Bell, Esq.
Chief Counsel and Staff Director
Select Investigative Panel on Infant Lives
[REDACTED]

Re: Subpoena to Scinto Group, LLP

Dear Mr. Bell:

As you know, this law firm represents the CPA firm, Scinto Group, LLP. This letter is in response to your letter to me of September 8, 2016, in which you described an intention to pursue contempt resolutions and referral against Scinto Group, LLP.

First, let me reiterate that, if not for the potential application of the privilege and/or confidentiality laws, Scinto Group LLP would be willing and able to comply with a valid subpoena from the Select Investigative Panel. However, in light of the potential application of those laws, under the current circumstances, Scinto Group is not in a position to unilaterally respond to the subpoena with the requested documents, absent client consent. I explained in my letter of June 28, 2016, in some detail, our specific legal analysis in that regard. I believe that the status of our discussion is, at most, a difference of opinion on the scope and interpretation of privilege and confidentiality laws. However, because your letter describes an intention to pursue contempt proceedings, it appears that you do not see this as a valid difference of opinion about the applicability of privilege and confidentiality laws and subpoena procedure. Nevertheless, I believe there is merit to further discussion of this matter, and so I ask you to please review this letter and respond.

Contrary to the suggestion in your letter, Scinto Group had no intent to “sully the integrity of Congress” when it suggested to you a method to resolve the privilege and confidentiality legal hurdles. To the contrary, we simply presented our view of the legal impediments that we face with respect to the subpoena, and then we proposed what seemed to be a perfectly reasonable and logical solution to the hurdles presented by the privilege and confidentiality laws – the Select Panel could issue a subpoena for the same records directly to StemExpress, since the records that Scinto Group has in its files were almost entirely provided to it by StemExpress. On the issue of that suggestion, we are a bit confused by some of the discussion in your letter, and we ask for clarification. Your



T. March Bell, Esq.
September 16, 2016
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letter appears to suggest in one part (p.2, ¶3) that StemExpress has received and failed to comply with a subpoena for the tax, financial statement, ledger and expense records that were covered by the subpoena to Scinto Group. But, in other parts of your letter (p.2, ¶2 and ¶4), it appears to suggest that there has not yet been a subpoena to StemExpress that covers those specific requests, and rather there have only been voluntary requests to StemExpress for those items. Our understanding is that StemExpress has not received a subpoena for those specific tax, financial statement and related items that were requested in the subpoena to Scinto Group. If that understanding is correct, then it still seems clear to me that our suggestion remains the most efficient means to eliminate the privilege and confidentiality problems that are presented by the subpoena to Scinto Group. If that understanding is incorrect, please let me know.

In regard to another comment in your letter, you say that “Congress does not recognize either privilege (attorney-client or accountant-client)”. However, that is not my understanding of applicable rules and precedent, as discussed in footnote 1 of my letter and in CRS Report 7-5700. If you are aware of some applicable legal precedent that supports that proposition in your letter, would you please provide it, so that I can consider it as we further address this matter?

Also, your letter says that because H. Res. 461 conferred subpoena authority upon the Chair of the Select Investigative Panel, “the House has acted.” It sounds as though you are taking the position that when a committee or panel is authorized to issue subpoenas, there are no limits to the scope or terms of the subpoenas it issues, and no circumstances under which such subpoenas could be questioned or invalidated, either for purposes of procedural deficiencies, application of privilege or confidentiality statutes, or the like. Am I reading your position correctly? If so, I again ask if you have legal precedent for that position, and if so would you please provide it; because, as I read the various cases discussed in CRS Report 7-5700, that is not my understanding of prior precedent in regard to congressional subpoenas. But, I am willing to review and reconsider based on what you may reference to me.

I also ask that you tell me what is the process that you anticipate, and the timing of that process. I presume, based on the fact that your letter of September 8 was sent more than two months after my letter to you of June 28, that there is not an intent to rush to initiate proceedings aimed at a contempt resolution until we have had at least a reasonable time to consider and further discuss this matter in light of your letter of September 8 and potential further communication. But, if that is not correct, and if there is an intent to move on some expedited time basis, please let me know the expected timing.

I see that your letter references a process that would include a Business Meeting of the Select Investigative Panel and a Report to the full House for consideration. But, then your letter also refers to the Chair of the Select Investigative Panel certifying “this report”, presumably a



T. March Bell, Esq.
September 16, 2016
Page Three

report of the Select Investigative Panel, to the Speaker with a recommendation to certify the report to the United States Attorney. That seems to suggest two different procedures, one involving the full House and one possibly not involving the full House. Also, I do not see any reference to presentation of the matter to the Committee on Energy and Commerce before proceeding to either the full House or to the Speaker. Do you anticipate that the matter will not be presented to the Committee? Could you clarify what is the planned procedure, and the timing? Also, would you please let me know if we will have an opportunity to further or directly discuss and/or explain our objections to the subpoena at any point in the process – e.g. to the Select Investigative Panel, or to the Committee, or to the House?

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Murphy". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Kevin M. Murphy

cc: Heather Sawyer, Democratic Staff Director, Select Investigative Panel (via email only)

StemExpress First Response to House Select Panel's March 29, 2016 Subpoenas

| 3/29/16 StemExpress Subpoena Specification No. | Description |
|--|--|
| 1 | All communications and documents referring or relating to Institutional Review Board (IRB), as defined by Title 45 of the Code of Federal Regulations, Part 46, consents for the period of March 29, 2012 through January 26, 2013. |

Please see enclosed production for documents responsive to this subpoena specification pertaining to fetal tissue donation. StemExpress is in the process of identifying additional communications and documents that may be responsive to this subpoena specification and will produce these materials on a rolling basis.

| 3/29/16 StemExpress Subpoena Specification No. | Description |
|--|--|
| 2 | All communications and documents referring or relating to Biomedical Research Institute of America, BioMed IRB, or BioMed Institutional Review Board. |

Please see enclosed production for documents responsive to this subpoena specification pertaining to fetal tissue donation. StemExpress is in the process of identifying additional communications and documents that may be responsive to this subpoena specification and will produce these materials on a rolling basis.

StemExpress First Response to House Select Panel's March 29, 2016 Subpoenas

| 3/29/16 Individual Subpoena Specification No. | Description |
|---|---|
| 1 | Documents sufficient to show the name(s) of all persons who serve as StemExpress's Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s). You may provide a list identifying such individuals and their corresponding positions in lieu of producing documents. |

Consistent with ongoing discussions with the Select Panel Majority Staff—and as articulated in our counsel's February 19, 2016 correspondence regarding the pertinence of having the names of individual employees—StemExpress remains gravely concerned about the safety and security risks associated with identifying additional personnel.

With that context, StemExpress's financial review/auditing function is handled by [REDACTED] a licensed CPA with the Scinto Group, LLP. To the extent that the Select Panel wishes to contact [REDACTED] we will provide his contact information. We are also aware that the Select Panel has subpoenaed Sara Lee Heuston for a deposition. As you know, Ms. Heuston served in an accounting role while she worked with StemExpress from 2010 to 2013, and would be in a position to provide information regarding her work with the company.

StemExpress First Response to House Select Panel’s March 29, 2016 Subpoenas

| 3/29/16 Individual Subpoena Specification No. | Description |
|---|---|
| 2 | All communications and documents sufficient to show accounts payable and accounts receivable concerning in any way the sale, storage, purchase, or transport of fetal tissue received by or sent by StemExpress's Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s). |

Please see the enclosed production for “roll-up” reports of StemExpress’s 2011 through 2013 fetal tissue sales, organized by customer, which complement the 2014 and 2015 reports that were previously produced in response to the Feb. 12, 2016 subpoena issued to StemExpress. These roll-up reports reflect all relevant information regarding accounts payable and accounts receivable related to the sale of fetal tissue.

Consistent with our agreement with the Select Panel Majority Staff, these reports were generated in lieu of producing additional email correspondence, purchase orders, invoices, and other documentation related to fetal tissue transactions in response to Spec. Nos. 6, 9, and 11 in the Feb. 12, 2016 subpoena. A substantial production of these various materials were previously produced for the January through April 2015 timeframe and are representative of how all fetal tissue orders are received, procured, and invoiced to customers.

MEMORANDUM

To: Majority Members of the Select Investigative Panel

From: Panel Counsel

RE: Authorization by the Chairman of the Issuance of a Subpoena to Sara Lee Heuston

Date: March 7, 2016

On October 6, 2015, the Committee on Rules issued Report 114-288 establishing the basis for a *Select Investigative Panel* of the Energy and Commerce Committee. In that Report's "Background and Need for Legislation" section it identified several video tapes that were made public that "raise[d] most troubling questions . . ." with regard to the procurement and sale of fetal tissue. Prior to the creation of the *Select Investigative Panel*, a precursor investigation requested information and testimony from several entities, including StemExpress, LLC, an entity that procured and distributed fetal tissue.

I. Authority of the Select Investigative Panel

The passage of H. Res. 461 requires the Panel to investigate and report on:

- A. Medical procedures and business practices used by entities involved in fetal tissue procurement;
- B. Any other relevant matters with respect to such procurement;
- C. Federal funding and support for abortion providers;
- D. The practices of providers of second and third trimester abortions, including partial birth abortion and procedures that may lead to a child born alive as a result of an attempted abortion;
- E. Medical procedures for the care of a child born alive as a result of an attempted abortion; and,
- F. Any changes in law or regulation necessary resulting from such findings.

II. The Panel's Inquiry into the Conduct of Sara Lee Heuston

- A. Ms. Heuston served at StemExpress, LLC, a tissue procurement business, as an accountant, in senior management, and as vice president of procurement.¹ In the

¹ <http://www.zoominfo.com/p/Sara-Heuston/177626727>

latter capacity, Ms. Heuston oversaw tissue procurement technicians. Sources with whom staff has spoken have stated that, when she left StemExpress, LLC, Ms. Heuston took records belonging to the firm, reportedly including accounting records. On March 7, 2016, staff telephoned Ms. Heuston and asked if she would be willing to speak with the Panel. Ms. Heuston replied: “Absolutely not, and if you call me again, I will consider it harassment and file charges.”

- B. Given Ms. Heuston’s intimate knowledge of StemExpress, LLC, and her possession of documents, and her refusal to voluntarily cooperate the Panel, the Chair has no choice but to issue Ms. Heuston a subpoena *duces tecum*. The Panel likely will issue another subpoena in the future for a deposition.

III. The Decision of the Chairman to Issue a Subpoena to Sara Lee Heuston

A. H. Res. 461, which established the Select Panel, states that it “is authorized and **directed** [emphasis added] to conduct a full and complete investigation . . .” of “. . .business practices used by entities involved in fetal tissue procurement.” In Section 4 the Resolution states, “Rule XI and the rules of the Committee on Energy and Commerce shall apply to the select panel in the same manner as a subcommittee except as follows:

(1) The chair of the select panel, consistent with the notification, consultation, and reporting requirements of rule 16 of the rules of the Committee on Energy and Commerce, may authorize and issue subpoenas pursuant to clause 2(m) of rule XI in the investigation and study conducted pursuant to section 3, including for the purpose of taking depositions.

(2) The chair of the select panel, upon consultation with the ranking minority member, may order the taking of depositions, under oath and pursuant to notice or subpoena, by a member of the select panel or a counsel of the select panel. Such depositions shall be governed by the regulations issued by the chair of the Committee on Rules pursuant to section 3(b)(2) of House Resolution 5, One Hundred Fourteenth Congress, and printed in the Congressional Record. The select panel shall be deemed to be a committee for purposes of such regulations.

B. Without a subpoena to Ms. Heuston, the Select Panel cannot perform its mandated duties from the House of Representatives.

Stem Express

Initial Analysis / Review of Financial Records Received as of 6/13/2016.

Background:

| Number of Customers Identified by Stem Express | | Number of Procurement Sources (Clinics) Identified by Stem Express | |
|---|---|--|---|
| 33 | | 8 | |
| Number of Customers that Stem Express has produced Invoices For | Number of Customers that have produced invoices they received from Stem Express | Number of Clinics that Stem Express has produced Invoices they Received From | Number of Clinics that have produced invoices they sent to Stem Express |
| 31 | 9 | 3 | 8 |

Synopsis of Potential Findings:

1) Incomplete Accounting Records.

It appears accounting records provided are incomplete as we found invoices (received from Stem Express by customers) and produced by these customers, missing from the record of invoices produced by Stem Express.

2) Overstated Cost and Expenses Associated with Fetal Tissue Procurement.

Stem Express' computation of estimated costs and revenues associated with fetal tissue procurement appears to be overstated for some items.

- Full cost that could be allocated to blood and fetal tissue, charged to fetal tissue.
- Apparent over exaggeration of hourly charge for simple procedure as filling paper work.
- Items included in cost but charged back to client, for example packaging & shipping.

3) Understated Revenue Associated with Fetal Tissue Procurement.

Stem Express did not include revenue from items like packaging, disease screening, and shipping, even though they included these items in determining their cost of procurement.

Pending - Analysis of records with clinics.
 - Analysis of other financial records.

✓ = Yes p = Partial
 X = No ∅ = Not Requested

STATUS OF RESPONSE TO RECORD REQUEST FROM TOP 5 PROCUREMENT BUSINESSES

| | Items Requested | Stem Express | Advance Bioscience Resources | DV Biologics | Novogenix | Einstein |
|---|--|---------------------|-------------------------------------|---------------------|------------------|-----------------|
| 1 | Documents sufficient to show all entities, including firms, corporations, non-profit organizations, and educational institutions, from which Entity receives or procures fetal tissue. Entity may produce a list of such entities in lieu of documents. | ✓ | ✓ | ✓ | ✓ | ✓ |
| 2 | Documents sufficient to show all entities, including firms, corporations, non-profit organizations, and educational institutions, to which 'Entity' sells or donates fetal tissue. Entity may produce a list of such entities in lieu of documents. | ✓ | ✓ | ✓ | X | ✓ |
| 3 | Documents sufficient to show all entities, including firms, corporations, non-profit organizations, and educational institutions, to which Entity transferred, subcontracted or sold any business interest or business assets related to the procurement or sale of fetal tissue. Entity may produce a list of such entities in lieu of documents. | ✓ | ✓ | ✓ | ✓ | ✓ |
| 4 | Documents sufficient to reflect Entity's organization chart, including information detailing Entity personnel who procure (d) fetal tissue at the clinic level and the supervisory personnel for those procurers of fetal tissue. | X | X | X | X | ✓ |
| 5 | All communications, whether internal or external, that direct or relate to a direction to Entity personnel to procure fetal tissue, including, but not limited to memoranda, emails, telephone messages, and purchase orders or bills of sale. | X | X | X | X | ✓ |
| 6 | All Entity accounting records, including but not limited to accounting memoranda related to the cost and pricing of fetal tissue. | X | X | X | X | ✓ |
| 7 | Documents sufficient to show all institutions or entities to which Entity donated or provided fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. You may provide a list | ✓ | ✓ | ✓ | ✓ | ✓ |

| | | | | | | | | |
|----|---|---|---|---|---|---|---|---|
| | of such institutions and entities in lieu of producing these documents. | | | | | | | |
| 8 | Copies of all invoices (by month and year), reflecting the billing that Entity issued to all institutions or entities to which Entity donated or provided fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. | V | V | V | V | V | V | V |
| 9 | Documents sufficient to show all institutions or entities from which Entity obtained fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. You may provide a list of such institutions and entities in lieu of producing these documents. | V | P | P | P | P | P | P |
| 10 | Copies of all invoices (by month and year) reflecting the billing or payment of funds for fetal tissues obtained by Entity for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. | V | V | V | V | P | V | V |
| 11 | A copy of any chart of accounts for Entity, including but not limited to account descriptions from any financial recording system relating to Entity. | X | X | X | X | X | X | X |
| 12 | Entity's end of year trial balance report and trial balance details for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. | X | X | X | X | X | X | X |
| 13 | All documents reflecting Entity's statement of revenues (i.e., a breakdown by product categories) for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. | X | P | V | V | X | X | X |
| 14 | All documents reflecting Entity's record of costs and expenses (i.e., a breakdown by operations, including fetal tissue acquisition) for administrative costs and expenses as well as compensation and benefits, for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Where applicable, records should include identification of vendors and descriptions of expenses. | P | P | V | X | V | V | V |
| 15 | Entity's balance sheets for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available. | X | X | V | X | X | X | X |
| 16 | Entity's income statements, including but not limited to any profit and loss statements, statements of operations and statements of activities for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available. | X | X | P | X | X | X | X |
| 17 | Copies of Entity's filed tax returns for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. | X | X | X | X | X | X | ∅ |
| 18 | All Entity bank statements from any financial institution where Entity has maintained an account for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. | X | X | X | X | X | X | ∅ |

| | | | | | | |
|----|---|---|---|---|---|---|
| 19 | Documents sufficient to show how Entity calculates(d) the cost of a fetal tissue and all factors applied in determining pricing of fetal tissue. In lieu of these documents, you may provide a written explanation. | X | X | V | X | ∅ |
| 20 | All specific requests made to Entity for fetal tissue made by any and all firms, corporations, non-profit organizations, educational institutions, or other entities, including, but not limited to, order lists, billing records, payment records, payment vouchers, and receipts. | X | P | V | P | V |
| 21 | All documents relating to the purchase, ownership, or rental by Entity of equipment involving fetal tissue research, the preparation of fetal tissue for research, the modification of fetal tissue into cell lines, or any other actions taken by Entity related to fetal tissue, including but not limited to, the date the equipment was purchased, its purchase price, its maintenance costs, and records of the depreciation treatment under the tax code of any such equipment. | P | X | V | X | V |
| 22 | An inventory record of all fetal tissues obtained, sold, or retained by Entity, as well as an inventory of current fetal tissue including, in particular, any records that refer to multiple tissue samples or organs or body parts harvested from a single fetus. | P | V | V | V | V |
| 23 | All records related to any fetal tissue or cell lines procured or sold from twin fetuses. | V | V | V | V | V |
| 24 | All documents relating to rent or site fees paid to entities from which Entity obtained, sold, or donated fetal tissue. | V | V | V | X | V |
| 25 | All training materials used by Entity for the procurement of fetal tissue, preparation of fetal tissue, storage of fetal tissue, and training materials or guidance documents related to Entity staff relations with personnel or patients at the source entities from which fetal tissue is procured. | V | V | X | X | V |
| 26 | All communications and documents referring or relating to Institutional Review Board (IRB), as defined by Title 45 of the Code of Federal Regulations, Part 46, consents for the period of March 29, 2012 through January 26, 2013. | V | X | X | X | V |

Tallmer, Matthew

From: Tallmer, Matthew
Sent: Friday, March 18, 2016 9:00 AM
To: Sidhu, Amandeep
Cc: Bell, March; Ryan, Stephen
Subject: RE: StemExpress 3/15/16 production

This message has been archived. [View the original item](#)

Upon further review of StemExpress' earlier productions, we must insist that your client provide roll-up reports for all documents listed in Item 8 of the February 17, 2016 subpoena, specifically "All communications and documents [emphasis added], sorted by customer, referring or relating to requests or orders made to StemExpress regarding fetal tissue and the amount paid by each customer to StemExpress" from the period of January 1, 2011 through the present. The Panel would like to have the roll-up reports, sorted by client, for the period of January 1, 2011 through January 1, 2014 no later than the close of business on April 1, 2016.

In response to the Panel's subpoena, StemExpress produced a full list of entities from which it received fetal tissue, which included five independent women's health clinics. In its earlier voluntary productions under the Panel's request letter, StemExpress produced invoices reflecting payments made from 2011 through mid-2015 only to certain clinics. In order to fulfil our mandate under H. Res. 461, which requires the Select Investigative Panel on Infant Lives "to conduct a full and complete investigation and study . . . regarding— (1) medical procedures and business practices used by entities involved in fetal tissue procurement; [and] (2) any other relevant matters with respect to fetal tissue procurement . . .", we find it necessary to request payment vouchers for the period of January 1, 2011 through the present from StemExpress to the following independent women's health clinics:

- Camelback Family Planning
- Cedar Rivers Clinics
- Family Planning Specialists Medical Group
- Presidential Medical Group
- Women's Health Specialists

Please produced the payment invoices no later than the close of business on April 1, 2016.

As mentioned in my March 17, 2016 email, if StemExpress declined to produced documents sufficient to show payments from StemExpress clients to which it distributed fetal tissue from the period of January 1, 2011 through the present, we would be requesting the name of the current bookkeeper or accountant for StemExpress. Since it is obvious from your email response that StemExpress has no intention of doing so, the Panel requires that StemExpress produce the name of its current bookkeeper or accountant by close of business today.

From: Sidhu, Amandeep [REDACTED]
Sent: Thursday, March 17, 2016 11:43 PM
To: Tallmer, Matthew
Cc: Bell, March; Ryan, Stephen
Subject: RE: StemExpress 3/15/16 production

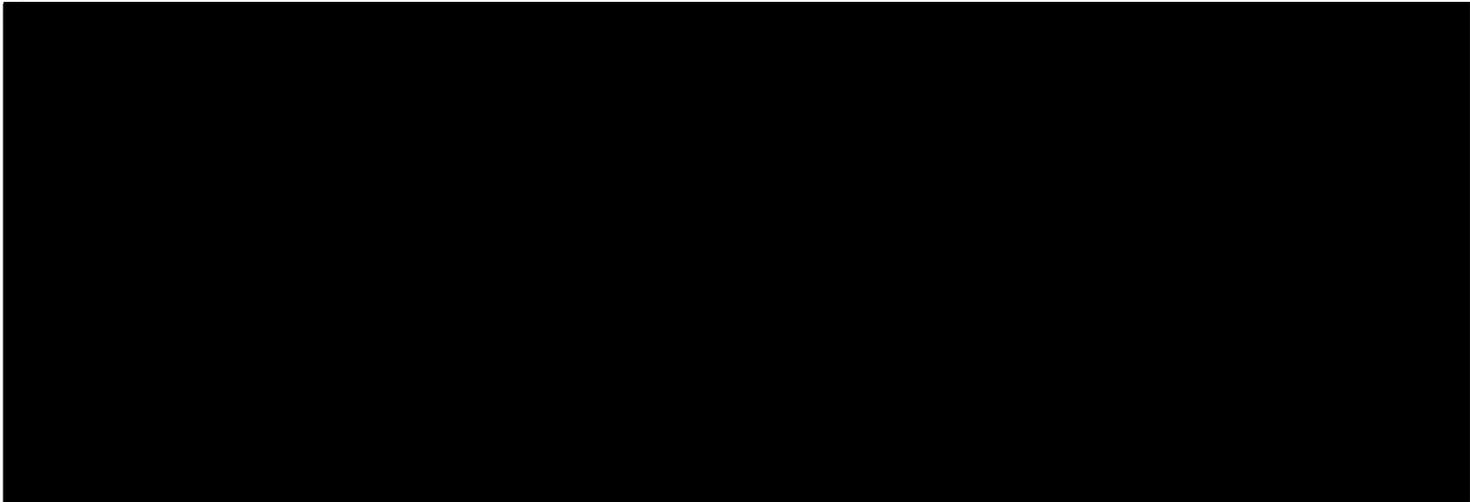
Matt,

My apologies for the delay – I was traveling for work today. To confirm, we agreed to provide roll-up reports for 2014 and 2015.

Aman

Amandeep S. Sidhu
Partner

<http://www.mwe.com/>



From: Tallmer, Matthew [REDACTED]
Sent: Thursday, March 17, 2016 3:12 PM
To: Sidhu, Amandeep
Cc: Bell, March; Ryan, Stephen
Subject: RE: StemExpress 3/15/16 production

Just to be clear, will those roll-up reports include the last five years?

From: Sidhu, Amandeep [REDACTED]
Sent: Thursday, March 17, 2016 3:10 PM
To: Tallmer, Matthew
Cc: Bell, March; Ryan, Stephen
Subject: RE: StemExpress 3/15/16 production

Matt,

Yes, we committed to providing you with roll-up reports from Stem

Attachments:

[image001.gif](#)

(5 KB)

Tallmer, Matthew

From: Ryan, Stephen [REDACTED]
Sent: Friday, March 18, 2016 9:54 AM
To: Tallmer, Matthew
Cc: Sidhu, Amandeep; Bell, March
Subject: Re: StemExpress 3/15/16 production

This message has been archived. [View the original item](#)

I take it you have no time or ability to speak.
Therefore we will respond in writing.
Steve Ryan

Sent from my iPhone

On Mar 18, 2016, at 9:44 AM, Tallmer, Matthew <[REDACTED]> wrote:

Our notes show that we had agreed to an initial production of 2014-2015 within two weeks. We also agreed that, upon review of those initial documents, we may be requiring all five years. Upon further review of our mandate and the documents StemExpress already has produced, we will require the "roll-outs" for all the years covered by the subpoena.

Additionally, we require by COB today the name of the current of the StemExpress internal accountant, bookkeeper or Chief Financial Officer.

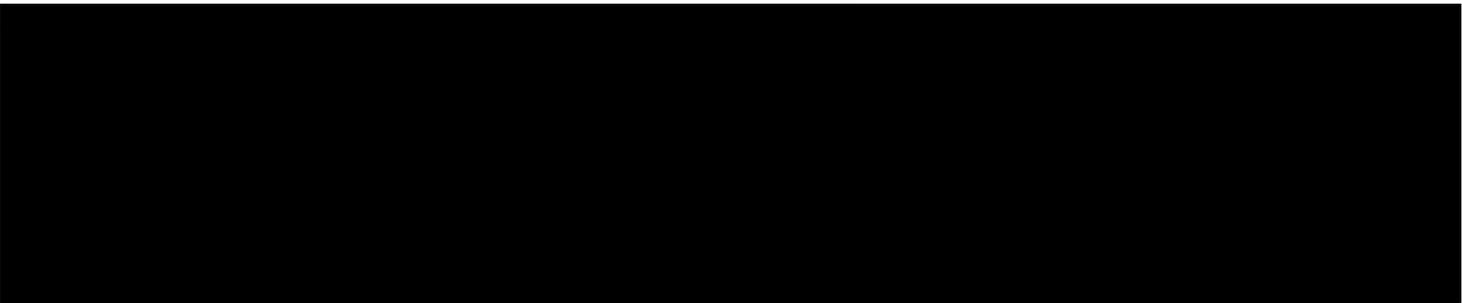
From: Ryan, Stephen [mailto:[REDACTED]]
Sent: Friday, March 18, 2016 9:30 AM
To: Tallmer, Matthew; Sidhu, Amandeep
Cc: Bell, March
Subject: RE: StemExpress 3/15/16 production

This set of revised directions you sent is not consistent with our discussion the other day--you are again changing the deadlines and adding requirements. Let's talk this thru--would 5 pm tonight work or Monday morning this week?

Stephen M. Ryan
Partner

[REDACTED]

000096



From: Tallmer, Matthew [REDACTED]
Sent: Friday, March 18, 2016 9:00 AM
To: Sidhu, Amandeep
Cc: Bell, March; Ryan, Stephen
Subject: RE: StemExpress 3/15/16 production

Upon further review of StemExpress' earlier productions, we must insist that your client provide roll-up reports for all documents listed in Item 8 of the February 17, 2016 subpoena, specifically "All communications and documents [emphasis added], sorted by customer, referring or relating to requests or orders made to StemExpress regarding fetal tissue and the amount paid by each customer to StemExpress" from the period of January 1, 2011 through the present. The Panel would like to have the roll-up reports, sorted by client, for the period of January 1, 2011 through January 1, 2014 no later than the close of business on April 1, 2016.

In response to the Panel's subpoena, StemExpress produced a full list of entities from which it received fetal tissue, which included five independent women's health clinics. In its earlier voluntary productions under the Panel's request letter, StemExpress produced invoices reflecting payments made from 2011 through mid-2015 only to certain clinics. In order to fulfil our mandate under H. Res. 461, which requires the Select Investigative Panel on Infant Livés "to conduct a full and complete investigation and study . . . regarding— (1) medical procedures and business practices used by entities involved in fetal tissue procurement; [and] (2) any other relevant matters with respect to fetal tissue procurement . . .", we find it necessary to request payment vouchers for the period of January 1, 2011 through the present from StemExpress to the following independent women's health clinics:

- Camelback Family Planning
- Cedar Rivers Clinics
- Family Planning Specialists Medical Group
- Presidential Medical Group
- Women's Health Specialists

Please produced the payment invoices no later than the close of business on April 1, 2016.

As mentioned in my March 17, 2016 email, if StemExpress declined to produced documents sufficient to show payments from StemExpress clients to which it distributed f

Attachments:

[image001.gif](#)

(5 KB)

Tallmer, Matthew

From: Sidhu, Amandeep [REDACTED]
Sent: Tuesday, August 23, 2016 3:05 PM
To: Tallmer, Matthew; Ryan, Stephen
Cc: Bell, March; Port J. Parker; Frank M. Radoslovich [REDACTED]
Subject: RE: McDermott, Will & Emery's representation of StemExpress

Matt,

StemExpress is now represented by Port Parker and Frank Radoslovich of the Radoslovich Parker Turner law firm. Their contact information is listed below and they are both copied on this email.

Port Parker
Frank Radoslovich
Radoslovich Parker Turner, PC Attorneys
[REDACTED]

Best,
Aman

Amandeep S. Sidhu
Partner
[REDACTED]

From: Tallmer, Matthew [REDACTED]
Sent: Tuesday, August 23, 2016 2:21 PM
To: Sidhu, Amandeep; Ryan, Stephen
Cc: Bell, March
Subject: McDermott, Will & Emery's representation of StemExpress

We have been told that your firm no longer represents StemExpress, LLC. Please inform us whether StemExpress is still one of your clients. If that is not the case, do you have the name and contact information for StemExpress' current counsel?

Thanks.

Matthew Tallmer
Investigator
Select Investigative Panel
[REDACTED]

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
[REDACTED]

September 8, 2016

Mr. Frank Radoslovich, Esq.
Radoslovich Parker Turner, PC Attorneys
[REDACTED]

Dear Mr. Radoslovich:

The Select Investigative Panel, formed by H. Res. 461, has reached an impasse with StemExpress and its noncompliance with lawful congressional subpoenas. The Panel will soon proceed to schedule a Business Meeting to consider a Report recommending that the U.S. House of Representatives hold StemExpress in contempt of Congress.

On October 7, 2015, the House voted to enact H. Res. 461, which established the Select Investigative Panel and “authorized and directed [it] to conduct a full and complete investigation and study and issue a final report of its findings . . . regarding (1) medical procedures and business practices used by entities involved in fetal tissue procurement; (2) any other relevant matters with respect to fetal tissue procurement; . . . and (6) any changes in law or regulation necessary as a result of any findings made under [those investigations and studies].”¹

In House Report 114-288 on House Resolution 461, the authority of the Panel to issue subpoenas is summarized. “Section 4 provides that rule XI of the Rules of the House of Representatives and the rules of the Committee on Energy and Commerce shall apply to the select panel in the same manner as any other subcommittee, except that the chair of the select panel (1) is authorized to authorize and issue subpoenas, including for the purpose of taking depositions; (2) may order the taking of depositions by members or counsel of the select panel and that any deposition taken pursuant to this authority will be governed by the regulations issued by the chair of the Committee on Rules; and (3) may recognize members or staff to question witnesses for periods longer than five minutes as though pursuant to clause 2(j)(2) of rule XI.” The Chairman of the Panel is required to consult to the extent practicable with the ranking minority but need not gain approval prior to issuance of a subpoena.

¹ H. Res. 461, Section 3.

Pursuant to the authority delegated to it under House Resolution 461, the Select Investigative Panel is investigating whether entities that procure fetal tissue are using loopholes in federal law or engaging in business practices that have the effect of undermining the purpose of laws prohibiting the interstate transfer of any fetal tissue for valuable consideration. As part of that investigation, the Panel is examining whether 42 U.S.C. § 289g-2 is effective, or needs to be amended to better achieve the legislative goals of the statute. Under Title 42 U.S.C. § 289g-2, which is, at its heart, an accounting statute, it is unlawful for any person to knowingly acquire, receive, or otherwise transfer any fetal tissue for valuable consideration if the transfer affects interstate commerce. The term “valuable consideration” does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

Through publicly available information and the Select Investigative Panel’s investigation, the Panel identified StemExpress, LLC (“StemExpress”), as an entity that procured fetal tissue from abortion clinics and transferred it to researchers. In accordance with its authorization under House Resolution 461, and consistent with its interest in examining whether any changes in federal laws or regulations are necessary as a result of its investigation, the Select Investigative Panel sought documents from StemExpress. As a result of StemExpress’ failure to comply fully with the Panel’s voluntary request for documents, the Panel was forced to subpoena StemExpress, its CEO, Ms. Catherine Spears Dyer, and its outside accountant, Scinto Group, LLP (“Scinto”) and its bank, “Five Star Bank”. Despite many accommodations and much negotiation with the subpoena recipients, StemExpress and Ms. Dyer willfully and inexcusably have refused to comply with important aspects of the Panel’s congressional subpoenas. Further, after refusing to comply with the Panel’s subpoena, StemExpress also has willfully and successfully attempted to convince its outside accountant, Scinto, to similarly refuse any compliance with the Panel’s subpoena.

On February 16, 2016, the Select Investigative Panel first issued a subpoena to StemExpress requiring the unredacted production of, among other items, the identities of StemExpress employees involved in the procurement of fetal tissue, so that staff could interview and/or depose them to determine how, among other things, fetal tissue procurement entities such as Stem Express operated, how StemExpress calculates what constitutes “valuable consideration” under 42 U.S.C. § 289g-2, and whether such employees could provide information concerning StemExpress’ business practices that could shed light on whether fetal tissue procurement entities may be using loopholes or unclarity in the law to actually make a profit on fetal tissue procurement.² At no time has the Select Investigative Panel threatened to expose the names of StemExpress employees for exposure’s sake or otherwise; as communicated to StemExpress and its counsel, the Panel merely sought identification of various employees and their job responsibilities to be able to obtain from appropriate individuals information necessary

² See February 16, 2016 Subpoena Schedule at 2, 3, 6. For example, the subpoena sought: “Documents sufficient to show the name and title of all StemExpress current and former personnel whose responsibilities included procuring, researching, storing, packaging for donation, transport or disposal of fetal tissue, and the identify, of any supervisory personnel under whom such individuals worked.” *Id.* at 2. The subpoena also called for “all communications and documents regarding any direction to Stem Express current or former personnel with respect to the procurement and disposal of fetal tissue,” as well as “[a]ll communications and documents relating to StemExpress employee compensation resulting from or relating to fetal tissue samples procured by current and former StemExpress personnel or other persons or entities that transact business with StemExpress. *Id.* at 3, 6.

to the Panel's investigation. Citing safety and security concerns, the firm refused to identify such individuals. StemExpress took this position even though some employee names are already in the public domain, including as reflected in a recent article about the company in *The Washington Post*.³

Further, to investigate whether 42 U.S.C. § 289g-2 effectively prohibits the procurement of fetal tissue for "valuable consideration", the Select Investigative Panel also sought production of StemExpress' banking and accounting records reflecting the company's "accounts payable and/or funds received that in any way refer to or relate to the procurement, sale, donation, or distribution or shipment of fetal tissue."⁴ Such information is invaluable to assist the Panel in examining business practices used by entities involved in fetal tissue procurement, and in informing the Panel's decisions concerning potential recommendations for amendments to or enactment of legislation relating to fetal tissue procurement. The Panel's first subpoena thus called for the production of all accounting records maintained by Stem Express relating to fetal tissue.⁵ StemExpress declined to produce actual banking and accounting records and, instead, unilaterally produced attorney-created accounting summaries, among other summaries. After months of non-compliance without any reasonable explanation and StemExpress' continuing, willful refusal to respond to the Panel's straightforward requests for the accounting records related to fetal tissue procurement, the Chairman of the Panel wrote a letter to StemExpress demanding the production of those records, and stating that failure to produce would leave the Panel with no choice but to pursue all means necessary to compel compliance. The attorney for StemExpress stated that the firm would not produce the accounting documents unless and until a new subpoena is issued. Eventually, in response to the Chairman's entreaty for compliance, in May 2016, StemExpress made a partial production of invoices for the provision of fetal tissue to researchers. That modest, partial production, however, was incomplete, did not contain invoices for all of StemExpress' clients, and fell far short of the subpoena's request. Without comprehensive accounting and banking information, it is nearly impossible for the Select Investigative Panel to fully complete its investigation, and provide meaningful recommendations regarding legislation about fetal tissue procurement and the business practices of entities that engage in such procurement.

On March 29, 2016, the Panel issued a second subpoena to Catherine Spears "Cate" Dyer, StemExpress' founder and chief executive officer, requiring documents sufficient to identify (or, if she preferred, a list identifying) the firm's finance director, finance manager, or account manager. Ms. Dyer refused to comply with the subpoena's requirement. That subpoena also required the production, in unredacted form, of "all communications and documents sufficient to show accounts payable and receivable concerning in any way the storage purchase or transport of fetal tissue, received by or sent by Stem Express's Director of Finance, Finance Manager, Account Manager, or equivalent positions."⁶ Such information is vital for the Select Investigative Panel to assess the efficacy of § 289g-2, as is the accounting information requested from StemExpress, as confirmed by hearing witnesses during the Panel's April 20, 2016 hearing,

³ See Danielle Paquette, *A Tiny Firm Caught In Abortion War*, WASH. POST, May 29, 2016, at G1.

⁴ February 16, 2016 Subpoena Schedule at 10.

⁵ See February 16, 2016 Subpoena Schedule at 9, 12.

⁶ See March 29, 2016 Subpoena Schedule.

"The Pricing of Fetal Tissue." Even though she is under subpoena, and despite the Panel's clear and direct need for the documents, Ms. Dyer still refuses to comply with the Panel's subpoena.

Due to StemExpress' and Ms. Dyer's failure to comply with the Panel's subpoenas and their continual refusal to provide accounting information directly pertinent to the Panel's investigation and study, conducted pursuant to House Resolution 461, the Panel was forced to subpoena Scinto, StemExpress' outside accountant. Scinto has indicated that it consulted with StemExpress counsel and that StemExpress expressly instructed Scinto not to produce its financial records in response to the Panel's subpoena.

Since Stem Express has been unwilling to comply with the Panel's subpoenas and having exhausted its efforts to obtain compliance from the subpoena recipients, the Chairman of the Select Investigative Panel will recommend that StemExpress and Catherine Spears Dyer be held in contempt for their willful failure to fully comply with the Panel's subpoenas issued to them, and for StemExpress' willful interference with the Panel's subpoena issued to StemExpress' accountant, Scinto. The Chairman will also recommend that the Speaker of the House of Representatives, pursuant to 2 U.S.C. §§ 192 and 194, certify this report of the Select Investigative Panel to the United States Attorney for the District of Columbia, and that StemExpress and Ms. Dyer be proceeded against in the manner and form provided by law. Should StemExpress and Ms. Dyer seek to comply with the subpoenas please contact March Bell on [REDACTED]

Sincerely,



Marsha Blackburn
Chairman
Select Investigative Panel of
the Committee on Energy and Commerce

cc: The Honorable Jan Schakowsky
Ranking Member
Select Investigative Panel

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



VIA EMAIL TO ATTORNEY OF RECORD

April 28, 2016

Ms. Cate Dyer
Founder & CEO
StemExpress



Dear Ms. Dyer:

Over the last several months, we have made numerous attempts to acquire business and accounting documents from StemExpress that are necessary to complete our work at the Select Investigative Panel. All of these requests have been met with verbal and written objections from your attorneys. In light of recent public comments you have made and the consensus reached by witnesses at our April 20 hearing on *The Pricing of Fetal Tissue* that a complete review of StemExpress business and accounting documents was necessary, I am writing to personally request you turn this information over to our investigators.

On October 6, 2015, the Committee on Rules issued Report 114-288 establishing the basis for a *Select Investigative Panel* of the Energy and Commerce Committee. In that Report's "Background and Need for Legislation" section it identified several video tapes that were made public that "raise[d] most troubling questions . . ." with regard to the procurement and sale of fetal tissue. Prior to the creation of the *Select Investigative Panel*, a precursor investigation requested information and testimony from several entities, including StemExpress, a biotech company that procures fetal tissue and then resells it to researchers.

You recently were quoted in the media as saying:

"I am appalled by Chairman [Marsha] Blackburn's statement," Cate Dyer, founder of StemExpress, told POLITICO. "StemExpress has provided over 2000 pages of material to the Senate and House committees which clearly illustrate we do not profit from the provision of fetal tissue to researchers. Unfortunately, the Select Panel continues to ignore the evidence - instead citing documents that courts have already found to be fabricated and falsified."

At our hearing held on April 20, 2016, the consensus among witnesses was that in order to get to the bottom of StemExpress involvement in the fetal tissue industry it would require the following:

- 1) A majority of witnesses agreed that banking records were necessary;
- 2) A majority of witnesses agreed that a forensic accounting review of StemExpress financial records was necessary;
- 3) Witnesses pointed out that although exhibits were redacted, a complete production of unredacted StemExpress business records is necessary to gain a complete understanding of whether StemExpress was profiting from the sale of baby body parts.

Although your press statement, if accurate, states that you have produced 2000 pages of documents, we have yet to receive accounting, banking and other business documents, for which subpoenas were issued to StemExpress. Instead, we have received attorney created estimates and summaries without back up materials. These summaries provide insufficient information to complete the Panel's review of the fetal tissue industry and they ignore the advice of the experts who testified at our April 20 hearing.

A comparison of "documents requested" and "documents received" was undertaken by the panel. The results of this review is visually displayed at Appendix A, attached with this letter.

Additionally, for your convenience please find documentation of the Panel's 4 month attempt to obtain compliance with its request and subpoenas attached at Appendix B.

Finally, your attorney raised a number of objections to our subpoena. Having reviewed all of these written and verbal objections, I find all of StemExpress' objections to the subpoena to be invalid and without legal merit. Please see Appendix C.

To fully comply with the subpoena, we require the production of the following missing documents:

- 1) Documents sufficient to reflect StemExpress' organization chart, including information detailing StemExpress personnel who procure(d) fetal tissue at the clinic level and the supervisory personnel for those procurers of fetal tissue.

- 2) All communications, whether internal or external, that direct or relate to a direction to StemExpress personnel to procure fetal tissue, including, but not limited to memoranda, emails, telephone messages, and purchase orders or bills of sale.
- 3) All StemExpress accounting records, including but not limited to accounting memoranda related to the cost and pricing of fetal tissue.
- 4) Copies of all invoices (by month and year), reflecting the billing that StemExpress issued to all institutions or entities to which StemExpress donated or provided fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 5) Copies of all invoices (by month and year) reflecting the billing or payment of funds for fetal tissues obtained by StemExpress for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 6) A copy of any chart of accounts for StemExpress, including but not limited to account descriptions from any financial recording system relating to StemExpress.
- 7) StemExpress' end of year trial balance report and trial balance details for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 8) All documents reflecting StemExpress' statement of revenues (i.e., a breakdown by product categories) for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 9) All documents reflecting StemExpress' record of costs and expenses (i.e., a breakdown by operations, including fetal tissue acquisition) for administrative costs and expenses as well as compensation and benefits, for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Where applicable, records should include identification of vendors and descriptions of expenses.
- 10) StemExpress' balance sheets for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available.
- 11) StemExpress' income statements, including but not limited to any profit and loss statements, statements of operations and statements of activities for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available.
- 12) Copies of StemExpress' filed tax returns for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.
- 13) All StemExpress bank statements from any financial institution where StemExpress has maintained an account for the following years: 2010, 2011, 2012, 2013, 2014 and 2015.

14) Documents sufficient to show how StemExpress calculates(d) the cost of a fetal tissue and all factors applied in determining pricing of fetal tissue. In lieu of these documents, you may provide a written explanation.

Please produce them no later than the close of business on May 12, 2016. Failure to comply will leave the Panel with no choice but to pursue all means necessary to compel compliance.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Marsha Blackburn". The signature is fluid and cursive, with the first name "Marsha" being more prominent than the last name "Blackburn".

Marsha Blackburn

Chair

Select Investigative Panel

cc: The Honorable Jan Schakowsky

Appendix A

STEMEXPRESS PRODUCTION LOG

| <u>Document Requested</u> | <u>Received</u> |
|--|--------------------------|
| A list of all entities, including firms, corporations, non-profit organizations, and educational institutions, from which StemExpress receives or procures fetal tissue. | NO |
| A list of all entities, including firms, corporations, non-profit organizations, and educational institutions, to which StemExpress sells or donates fetal tissue | NO |
| A list of all entities, including firms, corporations, non-profit organizations, and educational institutions, to which StemExpress transferred, subcontracted or sold any business interest or business assets related to the procurement or sale of fetal tissue. | NO |
| An organization chart that details StemExpress personnel that procure fetal tissue at the clinic level and the supervisory personnel for those procurers of fetal tissue | YES (both with no names) |
| All communications, whether internal or external, that direct StemExpress personnel to procure fetal tissue, including, but not limited to memoranda, emails, telephone messages, and purchase orders or bills of sale. | NO |
| All specific requests made to StemExpress for fetal tissue made by any and all firms, corporations, non-profit organizations, educational institutions, or other entities, including, but not limited to, order lists, billing records, payment records, payment vouchers, and receipts. | NO |

Received

Document Requested

All documents relating to the purchase, ownership, or rental by StemExpress of equipment involving fetal tissue research, the preparation of fetal tissue for research, the modification of fetal tissue into cell lines, or any other actions taken by StemExpress related to fetal tissue, including but not limited to, the date the equipment was purchased, its purchase price, its maintenance costs, and records of the depreciation treatment under the tax code of any such equipment.

NO

All accounting records including accounting memoranda related to the cost and pricing of fetal tissue.

NO

All specific requests made to StemExpress for fetal tissue made by any and all firms, corporations, non-profit organizations, educational institutions, or other entities, including, but not limited to, order lists, billing records, payment records, payment vouchers, and receipts.

NO

All documents relating to the purchase, ownership, or rental by StemExpress of equipment involving fetal tissue research, the preparation of fetal tissue for research, the modification of fetal tissue into cell lines, or any other actions taken by StemExpress related to fetal tissue, including but not limited to, the date the equipment was purchased, its purchase price, its maintenance costs, and records of the depreciation treatment under the tax code of any such equipment.

NO

An inventory record of all fetal tissues obtained, sold, or retained by StemExpress, as well as an inventory of current fetal tissue including, in particular, any records that refer to multiple tissue samples or organs or body parts harvested from a single fetus.

NO

Received

Document Requested

List of all institutions or entities to whom you have donated or provided fetal tissues for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015.

NO

Copies of all transaction logs and invoices (by month and year) you issued to all institutions or entities to whom you have donated or provided fetal tissues for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015.

NO

List of all institutions or entities from whom you have obtained fetal tissues for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015.

YES

A copy of your chart of accounts including account descriptions from your financial recording system.

NO

Trial balance and trial balance details for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015.

NO

Statement of revenues – breakdown by product (fetal tissue) categories for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015.

NO

Record of expenses – breakdown by operations (including fetal tissue acquisition), administration, as well as compensation and benefits for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. Where applicable, record should include vendors and description of expenses.

NO

Balance sheet for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available.

NO

Received

Document Requested

Income statement (or profit & loss statement, or statement of operations) or statement of activities) for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available.

NO

Copies of filed tax returns for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015.

NO

All monthly bank statements from all banks where you own accounts for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015.

NO

Explain your cost structure and factors applied in determining the cost of a fetal tissue.

NO

All communications and documents relating to StemExpress employee compensation resulting from or relating to fetal tissue samples procured by current and former StemExpress personnel or other persons or entities that transact business with StemExpress.

NO

All communications and documents that identify any federal, state, or local government funds received, directly or indirectly, by StemExpress.

YES

All communications referring or relating to abortion or fetal tissue between StemExpress and any federal, state, or local government officials or employees.

YES

All communications and documents regarding any direction to StemExpress current or former personnel with respect to the procurement or disposal of fetal tissue.

NO

Received

Document Requested

All communications and documents that StemExpress utilizes to obtain patient consent for fetal tissue at any clinic.

YES

All communications and documents, including but not limited to accounting memoranda, referring or relating to the cost and pricing of fetal tissue by StemExpress

NO

All communications and documents, sorted by customer, referring or relating to requests or orders made to StemExpress regarding fetal tissue and the amount paid by each customer to StemExpress.

NO

All communications and documents referring or relating to the purchase, ownership, or rental by StemExpress of equipment for the storage, disposal, modification, or research of fetal tissue, including equipment price, purchase date, maintenance costs, and records of the depreciation treatment under the tax code of any such equipment.

NO

Documents sufficient to show any known litigation in which StemExpress is named as a party, including any threatened or anticipated litigation. Should StemExpress wish to produce a list of such litigation, including appropriate docket information, in lieu of documents, it may do so.

YES

All communications and documents referring or relating to Independent Review Board consents for the period of March 29, 2012 through January 26, 2013.

YES

All communication and documents referring or relating to Biomedical Research Institute of America, BioMed IRB, or BioMed Institutional Review Board.

NO

| <u>Document Requested</u> | <u>Received</u> |
|--|-----------------|
| The name(s) of all persons who serve as Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s). | NO |
| All communications and documents to or from the Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s). | NO |

Appendix B

History of Select Panel Attempt to Gain Cooperation for Stem Express.

The Select Panel requested on December 17, 2015, documents since January 1, 2010, from StemExpress, including a list of where it obtained fetal tissue, where it distributed fetal tissue, and all communications related to the procurement and distribution of fetal tissue. In a December 18, 2015, letter to the Select Investigative Panel, StemExpress' attorneys called the original document request "overbroad." In a December 21, 2015 conference call with Panel staff, the attorneys for StemExpress explained that they **would not produce** the identity of any names of the entities from which they received fetal tissue, and that StemExpress' clients (those to whom they distributed fetal tissue) were covered by non-disclosure agreements (NDAs) and, thus, they **would not produce** those names. During that conference call, the Panel agreed to narrow the scope of its request, and to a rolling production, but did not agree to forego the identity of the sources or end uses of fetal tissue.

During a January 11, 2016 conference call with Panel staff, counsel for StemExpress stated it **would not produce** the names of entities from which it received fetal tissue, or the clients that were covered by NDAs; staff explained that was unacceptable. In a January 15, 2016, production (the second of its rolling productions), StemExpress stated it **"will not be voluntarily providing the names"** of where it obtained fetal tissue, and repeated that its contracts with clients "are subject to non-disclosure agreements and, therefore, cannot be voluntarily produced." In a February 1, 2014 production (the third of its rolling productions) StemExpress only produced communications dating from 2014, and those were replete with **large redactions**. In at least two instances, **entire pages were redacted**. During a February 9, 2016, the Select Panel's Staff Director told StemExpress' attorney that refusing to produce the names of the entities from which it received, and to whom it distributed, fetal tissue was unacceptable, as was redacting large portions of the requested communications.

As a result, the Select Investigate Panel was forced to issue a subpoena on February 12, 2016 which required the production in an unredacted form of 12 items. Despite that explicit legal instruction, StemExpress' production was replete with redactions. **Your firm flatly refused to produce one item, and produced an attorney-created accounting report, rather than required accounting documents.**

On April 11, 2016, the Select Investigative Panel issued two additional subpoenas: one to the firm, and the other to you personally. The subpoenas collectively called for the production of four items. **You outright refused to fully comply with the subpoena issued to you personally;** and, once again, produced an attorney-created accounting report, rather than required documents.

Appendix C

Objections to Congressional Subpoenas are Invalid

Your attorney has made numerous objections to the Panel's document requests and subpoenas. Please take notice of the materials below that explain the law with respect to Congressional investigations.

Scope Objections

As best we can discern, your communication through counsel make four general objections. First, that the vast majority of documents demanded "are far outside the seeming scope of [the Panel's] Congressional purpose . . ." Such an objection is wholly without merit, and documents responsive to the Subpoena must be produced forthwith.

The Panel's investigation and its Subpoena are well within its constitutional power and within the scope of its authority. The U.S. House of Representatives performs a quintessentially legislative role. *See, e.g.*, U.S. Const. art. I, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."); *see also, e.g., id.* art. I, § 7 (outlining legislative process). Inherent in its legislative role, the House maintains a "power of inquiry . . . as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 n.15 (1975); *see also McGrain v. Daugherty*, 273 U.S. 135, 174 (1927) ("the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function"). Indeed, the Supreme Court "has often noted that the power to investigate is inherent in the power to make laws because a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *Eastland*, 421 U.S. at 504 (quotation marks and brackets omitted).

To be constitutionally valid, a congressional subpoena must only (i) be properly authorized in accordance with House Rules, and (ii) seek information pertinent to a valid legislative purpose within the jurisdiction of the particular committee. *See Wilkinson v. United States*, 365 U.S. 399, 408-09 (1961). Such is the case here.

The House, through its rules, has delegated relevant substantive legislative jurisdiction, and its full investigative powers to the Select Panel. *See generally* Rules of the House of Representatives, 114th Cong. (2015) ("House Rules"), available at <http://clerk.house.gov/legislative/house-rules.pdf>.¹ As adopted by the House, H. Res. 461

¹ The House Rules are promulgated pursuant to the Rulemaking Clause, U.S. Const. art. I, § 5, cl. 2 ("Each House may determine the Rules of its Proceedings . . ."). The Rulemaking Clause provides a "broad grant of authority," *Consumers Union of the U.S., Inc. v. Periodical Correspondents' Ass'n*, 515 F.2d 1341, 1343 (D.C. Cir. 1975), that sits "[a]t the very core of our constitutional separation of powers," *Walker v. Jones*, 733 F.2d 923, 938 (D.C. Cir. 1984) (MacKinnon, J., concurring in part and dissenting in

created the Panel and “authorized and directed [the Panel] to conduct a full and complete investigation . . . regarding— (1) medical procedures and business practices used by entities involved in fetal tissue procurement; [and] (2) any other relevant matters with respect to fetal tissue procurement” To this end, House Rules authorize the Chairman of the Panel “to authorize and issue subpoenas.”

Here, the Chairman of the Select Panel authorized the issuance of the Subpoena to StemExpress. That Subpoena seeks materials pertinent to the Committee’s investigation into the fetal tissue industry, which plainly is within its legislative and oversight jurisdiction. The Select Committee’s investigative judgment, of course, generally cannot be questioned. *See Eastland*, 421 U.S. at 506 (citing *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951)).

Safety & Security Objections

Stem Express objects on the ground that it desires to stem the risk of harm that might flow from the public disclosure of materials. However, the Panel is not “the public,” and, as a legal matter, disclosure of these materials to the Panel does not implicate the stated concerns. Courts repeatedly have held that disclosure of information to a congressional committee is not a “public disclosure.” *See, e.g., F.T.C. v. Owens-Corning Fiberglass Corp.*, 626 F.2d 966, 970 (D.C. Cir. 1980) (holding that executive agency “may not deny Congress access to confidential documents, including those that contain trade secrets,” because “[r]elease to a congressional requestor is not a public disclosure forbidden by section 6(f) of the [Federal Trade Commission] Act”); *Exxon Corp.*, 589 F.2d at 585-86 (similar); *Ashland Oil, Inc. v. F.T.C.*, 548 F.2d 977, 979 (D.C. Cir. 1976) (per curiam) (similar). Indeed, courts have presumed just the opposite is true—that “[o]nce documents are in congressional hands . . . committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties.” *Owens-Corning Fiberglass Corp.*, 626 F.2d at 970 (quoting *Exxon Corp.*, 589 F.2d at 589); *see also, e.g., Jaymar-Ruby, Inc. v. F.T.C.*, 496 F. Supp. 838, 845 (N.D. Ind. 1980) (“[W]hile Courts have held that as a matter of law, it cannot be presumed that private persons will honor commitments not to disclose information, Courts do presume that government officials will honor similar commitments.”) (internal citation omitted).

This presumption reflects the general deference due to a coordinate branch of government, as well as the specific concern that “the judiciary must refrain from slowing or otherwise interfering with the legitimate investigatory functions of Congress.” *Owens-Corning Fiberglass Corp.*, 626 F.2d at 970; *see also Exxon Corp.*, 589 F.2d at 588-89. Thus, absent some actual showing that Congress intends to make documents public—a showing which plainly is lacking here—courts have rejected the notion that documents provided to Congress inevitably will be made public. *See, e.g., Exxon Corp.*, 589 F.2d at 589; *Ashland Oil, Inc.*, 548 F.2d at 979.²

part). Rules promulgated pursuant to the Rulemaking Clause, within constitutional limitations, are “absolute and beyond the challenge of any other body or tribunal.” *United States v. Ballin*, 144 U.S. 1, 5 (1892); *see also United States v. Smith*, 286 U.S. 6, 33 (1932) (same).

² Consistent with this principle, the judiciary has deferred to congressional interests in two other areas of federal law involving access to private or confidential information. First, courts routinely have permitted congressional committees to obtain secret grand jury materials protected under Rule 6(e) of the Federal Rules of Criminal Procedure. *See, e.g., In re Request for Access to Grand Jury Materials*, 833 F.2d 1438,

1444 (11th Cir. 1987); *In re Grand Jury Investig. of Ven-Fuel*, 441 F. Supp. 1299, 1307-08 (M.D. Fla. 1977); *In re Report & Recommendation of June 5, 1972 Grand Jury Concerning Transmission of Evidence to the House of Representatives*, 370 F. Supp. 1219, 1226 (D.D.C. 1974). Second, courts have recognized that executive agencies do not forfeit their ability to withhold documents from public scrutiny under the Freedom of Information Act simply by providing the information to congressional committees. See, e.g., *Fla. House of Representatives v. U.S. Dep't of Commerce*, 961 F.2d 941, 946 (11th Cir. 1992); *Murphy v. Dep't of Army*, 613 F.2d 1151, 1158-60 (D.C. Cir. 1979).

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Amandeep S. Sidhu
Attorney at Law

May 6, 2016

DELIVERED VIA EMAIL

The Honorable Marsha Blackburn
Chair, Select Investigative Panel
House Energy & Commerce Committee

The Hon. Jan Schakowsky
Ranking Member, Select Investigative Panel
House Energy & Commerce Committee

**Re: StemExpress Response to Chairman Blackburn's April 28 Letter to
StemExpress**

Dear Chairman Blackburn & Ranking Member Schakowsky:

On behalf of our client, StemExpress LLC ("StemExpress"),¹ this letter responds to Chairman Blackburn's April 28, 2016 letter addressed to StemExpress's CEO, Cate Dyer. The Chairman's letter raises several issues regarding perceived deficiencies in StemExpress's production of documents and information to the Select Panel. The factual record demonstrates that the Majority is mistaken in its characterizations of the company's responses to the Select Panel's investigation. The Chairman's most recent letter perpetuates an incorrect narrative of "non-cooperation" that is not supported by the facts.

Chronology of StemExpress's Responses to Select Panel

From the outset of the Select Panel's investigation, StemExpress has endeavored to respond to each of the Majority's requests – whether voluntarily or in response to various subpoenas. Upon receipt of Chairman Blackburn's December 17, 2015 letter requesting documents, StemExpress's counsel immediately contacted the Majority's staff and offered to produce all documents that were previously produced to the House Oversight & Government Reform Committee and the Senate Judiciary Committee. This volume of over 200 pages of documents was produced to the Select Panel three business days later, complementing over 700 pages of materials that were

¹ StemExpress is a privately held life sciences company that supports leading research institutions in the United States and internationally—including medical schools, pharmaceutical companies, and federal agencies—to provide stem cells and other human tissue critical to medical research. Cells produced by the physicians, scientists, medical technicians and nurses at StemExpress are currently used in research globally aimed at finding cures and treatments for cancer, diabetes, HIV/AIDS, cardiac disease, and other significant medical conditions. StemExpress plays a critical role in helping the global research community as they strive to achieve medical breakthroughs to stamp out global disease and improve quality of life.

produced to the House Energy & Commerce Committee in its earlier investigation. Based on explicit agreements with the Majority staff, StemExpress made two additional productions spanning over 400 pages of materials that responded to nearly all of the Majority's requests. Borne out of specific death threats directed at StemExpress and its employees² and the murderous attacks at a Planned Parenthood clinic in Colorado,³ StemExpress only questioned three areas of inquiry based on demonstrably legitimate safety and security concerns: (1) identification of individual StemExpress employees and the identification of individual scientists and researchers employed by StemExpress's fetal tissue customers; (2) identification of StemExpress's fetal tissue customers; and (3) identification of independent (*i.e.*, non-Planned Parenthood) women's clinics that have partnered with StemExpress to support fetal tissue procurement.

The Select Panel Majority subsequently issued a subpoena on February 12, 2016. StemExpress's counsel again conferred with the Majority staff and indicated that the company would respond completely to the request to identify StemExpress's fetal tissue customers and independent clinics once those entities could be contacted and advised to take necessary safety and security arrangements that could result the Select Panel's inquiry. StemExpress produced this information in full two weeks after receipt of the February 12 subpoena. Through subsequent discussions with the Majority staff, StemExpress also agreed to produce "roll-up" reports generated from the company's accounting system to reflect all fetal tissue transfers from January 1, 2011 through December 31, 2015. StemExpress produced the accounting reports for 2014 and 2015 on March 28 and indicated that the reports for 2011-2013—which were being pulled from a separate accounting system—would follow shortly. Amid StemExpress's continued cooperation and commitment to produce the remaining accounting records the following week, the Majority nonetheless issued additional subpoenas on March 29 that, in part, requested the *very information* that StemExpress had already agreed to produce. Nonetheless, StemExpress produced the remaining accounting reports for fetal tissue transfers from 2011-2013 on April 11, along with additional documents responsive to the March 29 subpoenas and documents voluntarily produced in response to separate requests from the Majority's staff.

Combined with the earlier productions to the Energy & Commerce Committee, StemExpress has produced over 1,600 pages of documents in response to the Majority's various inquiries. Below is an index of the productions that have been made by StemExpress in response to the various requests for information.

² Mark Anderson, *Anti-abortion activist pleads guilty to threatening StemExpress CEO*, SACRAMENTO BUSINESS JOURNAL (Apr. 19, 2016), <http://www.bizjournals.com/sacramento/news/2016/04/19/anti-abortion-activist-pleads-guilty-death-threats.html>.

³ Jack Healy, *Documents Detail Scene of Planned Parenthood Shooting in Colorado Springs*, THE NEW YORK TIMES (Apr. 11, 2016), http://www.nytimes.com/2016/04/12/us/documents-detail-scene-of-planned-parenthood-shooting-in-colorado-springs.html?_r=0.

| Production No. | Production Date | Bates Range |
|-------------------------------|-----------------------|----------------------------|
| Prior Production to House E&C | August-September 2015 | STEM.HOUSE.EC_0001-0710 |
| 1 | December 22, 2015 | STEM.HOUSE.SELECT_0001-226 |
| 2 | January 15, 2016 | STEM.HOUSE.SELECT_0227-282 |
| 3 | February 1, 2016 | STEM.HOUSE.SELECT_0283-659 |
| 4 | February 26, 2016 | STEM.HOUSE.SELECT_0660-661 |
| 5 | March 4, 2016 | STEM.HOUSE.SELECT_0662-663 |
| 6 | March 14, 2016 | STEM.HOUSE.SELECT_0664-705 |
| 7 | March 28, 2016 | STEM.HOUSE.SELECT_0706-712 |
| 8 | April 11, 2016 | STEM.HOUSE.SELECT_0713-891 |
| 9 | April 19, 2016 | STEM.HOUSE.SELECT_0892-907 |

Additionally, we have compared Appendix A in Chairman Blackburn's letter, described as "StemExpress Production Log," with the actual productions made by the company since December 2015. *See Appendix A: Corrected StemExpress Production Log. With very few exceptions, nearly every single characterization of the status of StemExpress's productions to date is inaccurate. Id.* In at least twelve instances, the Majority characterizes StemExpress's response as "no" when, in fact, the company has *already completed its production. Id.* These misstatements perpetuate the factually incorrect narrative of noncooperation that is apparently being promulgated by the Majority.

StemExpress's Future Responses to Select Panel

StemExpress is committed to cooperating with the Select Panel's investigation. However, we ask for fairness and accuracy in the Select Panel's characterization of StemExpress and the company's responses in this investigation. This concern was made readily apparent in the April 20 hearing entitled "The Pricing of Fetal Tissue," when the Majority used documents purporting to be from StemExpress that were apparently from the stolen cache of materials held by David Daleiden and the Center for Medical Progress. *See Exhibit A, Letter from StemExpress to Chairman Blackburn re April 20 Hearing Exhibits (Apr. 19, 2016).* Member of the press picked up incorrect statements of facts from these exhibits and repeated them to the American public.⁴

StemExpress also remains gravely concerned about the Majority's insistence on "naming names" of individual researchers associated with StemExpress's customers and identifying StemExpress personnel without any explanation of why this information is required. To date, the Majority has not provided any explanation as to why it needs the names of all StemExpress personnel rather than accept the witnesses that have been offered, including a corporate witness to provide

⁴ *See, e.g., Rachel Stoltzfoos, Two Sickening Charts Show Explosive Growth Of Fetal Tissue Buyer, THE DAILY CALLER (Apr. 30, 2016), <http://dailycaller.com/2016/04/30/two-sickening-charts-show-explosive-growth-of-fetal-tissue-buyer/> (citing to the Majority's Exhibit B4 as evidence that StemExpress worked with 250 abortion clinics in 2016 when, in fact, StemExpress has never actively procured fetal tissue from more than *nine clinics*, and that was in 2012; in 2016 that number is *only four*).*

testimony consistent with Fed. R. Civ. P. 30(b)(6) on the fetal tissue procurement process. While the Chairman is correct that an investigatory Congressional committee has broad power of inquiry, the U.S. Supreme Court has made clear and that this power “is not unlimited” and “[t]here is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.” *Watkins v. United States*, 354 U.S. 178, 187 (1957). It is also important to note that “Congress [is not] a law enforcement or trial agency,” as “[t]hese are functions of the executive and judicial departments of government.” *Id.* The Majority seems intent on inappropriately to be acting as if it is a law enforcement agency, a function that is reserved for the Executive Branch.⁵ With regard to the Majority’s unwavering demand to collect names of individuals without providing a justifiable basis or demonstrating pertinence, the Majority should note that “[n]o inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.” *Id.*; see also *United States v. Rumely*, 345 U.S. 41, 47 (1953).

The Chairman’s letter cites to *Ashland Oil, Exxon Corp.*, and *FTC v. Owens-Corning Fiberglass Corp.* to stand for the proposition that witnesses must provide Congressional committees materials that could pose serious safety and security concerns for the witnesses because “committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties.” However, as the D.C. Circuit in *Owens-Corning* noted, “[b]oth *Ashland* and *Exxon* leave open the possibility of judicial intervention to block the FTC’s release to Congress of data containing trade secrets, if the owners of that data can establish that it is likely that Members of Congress or Congressional employees will act irresponsibly, such as by demonstrating a history of past releases by them to the public of data containing trade secrets.” *F.T.C. v. Owens-Corning Fiberglass Corp.*, 626 F.2d 966, 981 (D.C. Cir. 1980).

StemExpress and its employees were directly targeted by an individual who was investigated by the FBI, arrested and prosecuted by the U.S. Department of Justice, and recently pled guilty in federal court for his illegal death threats. StemExpress has made the Majority aware of these concerns on numerous occasions, but has received little by way of assurance that the Majority will ultimately protect the names of any individual employees. The Chairman’s recent focused attention on StemExpress’s CEO—including the April 28 letter itself, which was made public with a May 2 press release that unequivocally “names names”—raises additional questions about the protection of individuals’ identities involved in the Select Panel’s investigation. Ultimately, StemExpress’s narrowly tailored interest in the safety of individual employees and client personnel outweighs the Majority’s claim to certain information. *Cf. Bergman v. Senate Special Comm. on Aging*, 389 F. Supp. 1127, 1130 (S.D.N.Y. 1975) (citing *Watkins*, 354 U.S. 178 (“[W]here the inquiry or the request for documents is not ‘justified by a specific legislative

⁵ See *Select Investigative Panel Issues Subpoenas for StemExpress Accounting & Banking Records*, Energy & Commerce Cmte. (May 5, 2016), <https://energycommerce.house.gov/news-center/press-releases/select-investigative-panel-issues-subpoenas-stemexpress-accounting> (“[d]ocuments uncovered by our investigation so far point to the very troubling possibility that StemExpress may have violated federal law by profiting from the sale of baby body parts”).

need,' the threat of a violation of an individual's constitutional rights, including his or her 'personal interest in privacy,' outweighs any right the Subcommittee might claim to the subpoenaed documents and requires that disclosure not be compelled.'").

Select Panel Majority's Latest New Requests to StemExpress

As outlined in the earlier discussion, the Majority has consistently "moved the goalposts" over the past several months to perpetuate an inaccurate narrative of noncooperation. The Chairman's April 28 letter does this once more by adding over a dozen *new* requests for extensive financial and accounting information. These 13 new requests, listed below, cover a large volume of reports and data, some of which has already been produced but much of which is not pertinent to the Select Panel's scope of inquiry authorized by H. Res. 461.

| Request No. | Description |
|-------------|---|
| 1 | All StemExpress accounting records, including but not limited to accounting memoranda related to the cost and pricing of fetal tissue. |
| 2 | Copies of all invoices (by month and year), reflecting the billing that Stem Express issued to all institutions or entities to which StemExpress donated or provided fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. |
| 3 | Copies of all invoices (by month and year), reflecting the billing that Stem Express issued to all institutions or entities to which StemExpress donated or provided fetal tissues for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. |
| 4 | Copies of all invoices (by month and year) reflecting the billing or payment of funds for fetal tissues obtained by StemExpress for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. |
| 5 | A copy of any chart of accounts for StemExpress, including but not limited to account descriptions from any financial recording system relating to StemExpress. |
| 6 | All documents reflecting StemExpress' statement of revenues (i.e., a breakdown by product categories) for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. |
| 7 | All documents reflecting StemExpress' record of costs and expenses (i.e., a breakdown by operations, including fetal tissue acquisition) for administrative costs and expenses as well as compensation and benefits, for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Where applicable, records should include identification of vendors and descriptions of expenses. |
| 8 | StemExpress' balance sheets for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available. |
| 9 | StemExpress' income statements, including but not limited to any profit and loss statements, statements of operations and statements of activities for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available. |
| 10 | Copies of StemExpress' filed tax returns for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. |
| 11 | All StemExpress bank statements from any financial institution where StemExpress has |

| Request No. | Description |
|-------------|--|
| | maintained an account for the following years: 2010, 2011, 2012, 2013, 2014 and 2015. |
| 12 | Documents sufficient to show how StemExpress calculates(d) the cost of a fetal tissue and all factors applied in determining pricing of fetal tissue. In lieu of these documents, you may provide a written explanation. |
| 13 | All communications and documents to or from the Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s). |

The new requests also expand the scope of the earlier investigation by adding 2010, whereas all prior requests were limited to 2011 through 2015. In light of the Majority's interactions with StemExpress in recent months, the company will not be responding to these new requests unless and until a subpoena requesting this new information is duly served. StemExpress will, however, begin collecting documents responsive to these new requests and determining what information is pertinent to the Select Panel's investigation and could be produced in response to a future subpoena, which we assume will be forthcoming.

* * * * *

StemExpress remains committed to responding to the Select Panel's inquiries, but respectfully implores upon the Chairman and the leadership of the Majority party to restore a sense of order and decency to this investigation. We are certainly willing to work with the Majority staff—in conjunction and consultation with the Minority staff—to reach common ground and provide requested information in a reasonable but timely manner. However, the ever-shifting prerogative of the Majority staff, including renegeing on explicit agreements reached during the course of the investigation, and the recent foray into law enforcement by the Majority members on the Select Panel, all raises serious questions about purpose and legitimacy of this investigation.

If you have any questions about this correspondence, please do not hesitate to contact me at [REDACTED]

Sincerely,



Amandeep S. Sidhu

Encl.

cc (via email w/encl.):

Kerry W. Kircher, General Counsel, U.S. House of Representatives
Karen Christian, General Counsel, Committee on Energy and Commerce

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|--|--|--|---|
| | | | this request: STEM.HOUSE.SELECT_0042-44 STEM.HOUSE.SELECT_0232-233 STEM.HOUSE.SELECT_0892-897 STEM.HOUSE.EC_0675-0695 |
| All specific requests made to StemExpress for fetal tissue made by any and all firms, corporations, non-profit organizations, educational institutions, or other entities, including, but not limited to, order lists, billing records, payment records, payment vouchers, and receipts. | December 17, 2015 Letter from Majority, Request No. 7 (duplicate) | NO | RESPONSE COMPLETE StemExpress reached an express agreement with the Majority staff limiting this request to a four-month period (January-April 2015), selected by the Majority staff. These documents were produced to the Select Panel on February 1, 2016 . The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0284 STEM.HOUSE.SELECT_0290-651 |
| All documents relating to the purchase, ownership, or rental by StemExpress of equipment involving fetal tissue research, the preparation of fetal tissue | December 17, 2015 Letter from Majority, Request No. 8 (duplicate) | NO | RESPONSE COMPLETE StemExpress produced a complete and final response to this request on February 1, 2016 . |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|--|---|--|---|
| <p>for research, the modification of fetal tissue into cell lines, or any other actions taken by StemExpress related to fetal tissue, including but not limited to, the date the equipment was purchased, its purchase price, its maintenance costs, and records of the depreciation treatment under the tax code of any such equipment.</p> | | | <p>The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0286 STEM.HOUSE.SELECT_0290-651</p> |
| <p>An inventory record of all fetal tissues obtained, sold, or retained by StemExpress, as well as an inventory of current fetal tissue including, in particular, any records that refer to multiple tissue samples or organs or body parts harvested from a single fetus.</p> | <p>December 17, 2015 Letter from Majority, Request No. 9</p> | <p>NO</p> | <p>RESPONSE COMPLETE StemExpress produced a complete and final response to this request on February 1, 2016. The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0287 STEM.HOUSE.SELECT_0290-651</p> |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|--|---|--|--|
| List of all institutions or entities to whom you have donated or provided fetal tissues for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. | April 28, 2016 Letter from Chairman Blackburn <u>REQUESTED FOR FIRST TIME</u> | NO | NEW REQUEST These materials were requested for the first time in Chairman Blackburn's April 28, 2016 letter. StemExpress is awaiting issuance of a subpoena before producing additional documents in response to these requests. StemExpress will nonetheless begin collecting documents responsive to this request and will be in a position to provide a reasonable production schedule upon receipt of a subpoena. This explanatory note is referenced below for each of the Majority's new requests. |
| Copies of all transaction logs and invoices (by month and year) you issued to all institutions or entities to whom you have donated or provided fetal tissues for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. | April 28, 2016 Letter from Chairman Blackburn <u>REQUESTED FOR FIRST TIME</u> | NO | NEW REQUEST See explanatory note above. |
| List of all institutions or entities from whom you have obtained fetal tissues for the five years ended 2010, 2011, | April 28, 2016 Letter from Chairman Blackburn | NO | NEW REQUEST See explanatory note above. |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|--|--|--|---|
| 2012, 2013, 2014 and 2015. | <u>REQUESTED FOR FIRST TIME</u> April 28, 2016 Letter from Chairman Blackburn | NO | NEW REQUEST See explanatory note above. |
| A copy of your chart of accounts including account descriptions from your financial recording system. | <u>REQUESTED FOR FIRST TIME</u> April 28, 2016 Letter from Chairman Blackburn | NO | NEW REQUEST See explanatory note above. |
| Trial balance and trial balance details for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. | <u>REQUESTED FOR FIRST TIME</u> April 28, 2016 Letter from Chairman Blackburn | NO | NEW REQUEST See explanatory note above. |
| Statement of revenues - breakdown by product (fetal tissue) categories for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. | <u>REQUESTED FOR FIRST TIME</u> April 28, 2016 Letter from Chairman Blackburn | NO | NEW REQUEST See explanatory note above. |
| Record of expenses - breakdown by operations (including fetal tissue | <u>REQUESTED FOR FIRST TIME</u> April 28, 2016 Letter from Chairman Blackburn | NO | NEW REQUEST See explanatory note above. |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|--|--|--|--|
| acquisition), administration, as well as compensation and benefits for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. Where applicable, record should include vendors and description of expenses. | <u>REQUESTED FOR FIRST TIME</u> | | |
| Balance sheet for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available. | April 28, 2016 Letter from Chairman Blackburn <u>REQUESTED FOR FIRST TIME</u> | NO | NEW REQUEST See explanatory note above. |
| Income statement (or profit & loss statement, or statement of operations) or statement of activities) for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. Audited statements should be provided, if available. | April 28, 2016 Letter from Chairman Blackburn <u>REQUESTED FOR FIRST TIME</u> | NO | NEW REQUEST See explanatory note above. |
| Copies of filed tax returns for | April 28, 2016 Letter | NO | NEW REQUEST |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|---|--|--|--|
| the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. | from Chairman Blackburn REQUESTED FOR FIRST TIME | | See explanatory note above. |
| All monthly bank statements from all banks where you own accounts for the five years ended 2010, 2011, 2012, 2013, 2014 and 2015. | April 28, 2016 Letter from Chairman Blackburn REQUESTED FOR FIRST TIME | NO | NEW REQUEST See explanatory note above. |
| Explain your cost structure and factors applied in determining the cost of a fetal tissue. | April 28, 2016 Letter from Chairman Blackburn REQUESTED FOR FIRST TIME | NO | NEW REQUEST See explanatory note above. |
| RESPONSE COMPLETE | | | |
| All communications and documents relating to StemExpress employee compensation resulting from or relating to fetal tissue | February 12, 2016 Subpoena to StemExpress, Spec. No. 3 | NO | RESPONSE COMPLETE StemExpress produced documents responsive to this request on March 14, 2016 . |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|---|--|--|---|
| <p>samples procured by current and former StemExpress personnel or other persons or entities that transact business with StemExpress.</p> | | | <p>The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0666 STEM.HOUSE.SELECT_0664-705</p> |
| <p>All communications and documents that identify any federal, state, or local government funds received, directly or indirectly, by StemExpress.</p> | <p>February 12, 2016 Subpoena to StemExpress, Spec. No. 4</p> | <p>YES</p> | <p>RESPONSE COMPLETE StemExpress produced documents responsive to this request on March 14, 2016. The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0667</p> |
| <p>All communications referring or relating to abortion or fetal tissue between StemExpress and any federal, state, or local government officials or employees.</p> | <p>February 12, 2016 Subpoena to StemExpress, Spec. No. 5</p> | <p>YES</p> | <p>RESPONSE COMPLETE StemExpress produced documents responsive to this request on March 14, 2016. The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0667</p> |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|---|--|--|--|
| <p>All communications and documents regarding any direction to StemExpress current or former personnel with respect to the procurement or disposal of fetal tissue.</p> | <p>February 12, 2016 Subpoena to StemExpress, Spec. No. 6</p> | <p>NO</p> | <p>RESPONSE COMPLETE StemExpress reached an express agreement with the Majority staff limiting this request to a four-month period (January-April 2015), selected by the Majority staff. These documents were produced to the Select Panel on February 1, 2016. The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0284 STEM.HOUSE.SELECT_0290-651</p> |
| <p>All communications and documents that StemExpress utilizes to obtain patient consent for fetal tissue at any clinic.</p> | <p>February 12, 2016 Subpoena to StemExpress, Spec. No. 7</p> | <p>YES</p> | <p>RESPONSE COMPLETE StemExpress produced documents responsive to this request on March 14, 2016. The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0668 STEM.HOUSE.SELECT_0664-705</p> |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|--|---|--|--|
| <p>All communications and documents, including but not limited to accounting memoranda, referring or relating to the cost and pricing of fetal tissue by StemExpress.</p> | <p>February 12, 2016 Subpoena to StemExpress, Spec. No. 8</p> | <p>NO</p> | <p>RESPONSE COMPLETE</p> <p>StemExpress produced an initial response to this request on January 15, 2016. Additional documents responsive to this request were produced on April 19, 2016.</p> <p>The following documents are specifically responsive to this request:</p> <p>STEM.HOUSE.SELECT_0042-44 STEM.HOUSE.SELECT_0232-233 STEM.HOUSE.SELECT_0892-897 STEM.HOUSE.EC_0675-0695</p> |
| <p>All communications and documents, sorted by customer, referring or relating to requests or orders made to StemExpress regarding fetal tissue and the amount paid by each customer to StemExpress.</p> | <p>February 12, 2016 Subpoena to StemExpress, Spec. No. 9</p> | <p>NO</p> | <p>RESPONSE COMPLETE</p> <p>StemExpress reached an express agreement with the Majority staff to produce an accounting report for fetal tissue transfers for 2011 through 2015. The "roll-up" accounting reports for 2014-2015 were produced to the Select Panel on March 28, 2016 and the accounting reports for 2011-2013 were produced on April 11, 2016.</p> <p>The following documents are specifically responsive to</p> |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|---|---|--|---|
| | | | this request: STEM.HOUSE.SELECT_0668 STEM.HOUSE.SELECT_0707 STEM.HOUSE.SELECT_0708-712 STEM.HOUSE.SELECT_0713-891 |
| All communications and documents referring or relating to the purchase, ownership, or rental by StemExpress of equipment for the storage, disposal, modification, or research of fetal tissue, including equipment price, purchase date, maintenance costs, and records of the depreciation treatment under the tax code of any such equipment. | February 12, 2016 Subpoena to StemExpress, Spec. No. 10 | NO | RESPONSE COMPLETE StemExpress produced a complete and final response to this request on February 1, 2016 voluntarily in response to the Majority's December 17, 2015 letter requests. The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0286 STEM.HOUSE.SELECT_0652-659 |
| Documents sufficient to show any known litigation in which StemExpress is named as a party, including any threatened or anticipated | February 12, 2016 Subpoena to StemExpress, Spec. No. 12 | YES | RESPONSE COMPLETE StemExpress produced a complete and final response to this request on March 14, 2016 . |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|---|--|--|--|
| litigation. Should StemExpress wish to produce a list of such litigation, including appropriate docket information, in lieu of documents, it may do so. | | | <p>The following documents are specifically responsive to this request:</p> <p>STEM.HOUSE.SELECT_0670 STEM.HOUSE.SELECT_0664-705 STEM.HOUSE.EC_0080-660</p> |
| | | | |
| All communications and documents referring or relating to Independent Review Board consents for the period of March 29, 2012 through January 26, 2013. | March 29, 2016 Subpoena to StemExpress, Spec. No. 1 | NO | <p>RESPONSE ONGOING</p> <p>StemExpress made an initial production in response to this request on April 11, 2016 and anticipates completion of production in response to this request on or before May 13, 2016.</p> <p>The following documents are specifically responsive to this request:</p> <p>STEM.HOUSE.SELECT_0830-891</p> |
| All communication and documents referring or relating to Biomedical Research Institute of America, BioMed IRB, or BioMed Institutional | March 29, 2016 Subpoena to StemExpress, Spec. No. 2 | NO | <p>RESPONSE ONGOING</p> <p>StemExpress made an initial production in response to this request on April 11, 2016 and anticipates completion of production in response to this request on or before May 13, 2016.</p> |

APPENDIX A – CORRECTED STEMEXPRESS PRODUCTION LOG

| Request Description | Source of Request | Majority Characterization of StemExpress's Response(s) | Actual Status of StemExpress's Response(s) |
|---|---|--|--|
| Review Board. | | | <p>The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0830-891</p> |
| <p>The name(s) of all persons who serve as Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s).</p> | <p>Appears to be similar to March 29, 2016 Subpoena to Cate Dyer, Spec. No. 1</p> | <p>NO</p> | <p>RESPONSE COMPLETE StemExpress made a complete and final production in response to this request on April 11, 2016. The following documents are specifically responsive to this request: STEM.HOUSE.SELECT_0713-715</p> |
| <p>All communications and documents to or from the Director of Finance, Finance Manager, Accountant Manager, or equivalent position(s).</p> | <p>April 28, 2016 Letter REQUESTED FOR FIRST TIME</p> | <p>NO</p> | <p>NEW REQUEST StemExpress is awaiting issuance of a subpoena for these materials that were requested for the first time in Chairman Blackburn's April 28, 2016 letter. StemExpress will nonetheless begin collecting documents responsive to this request and will be in a position to provide a reasonable production schedule upon receipt of a subpoena.</p> |

Hon. Marsha Blackburn & Hon. Jan Schakowsky

April 19, 2016

Page 6

House Energy & Commerce Committee, House Oversight & Government Reform Committee, and Senate Judiciary Committee. StemExpress subsequently continued to produce hundreds of pages of additional materials and respond to questions from the Majority Staff via several teleconferences. To date, StemExpress has nearly 900 pages of materials in response to the Select Panel's various inquiries, including the production of accounting reports and other work product that efficiently provided the Select Panel with certain categories of information that would otherwise have required more work for the Majority staff.

Despite StemExpress's consistent desire to cooperate with the Majority's ever-shifting demands, the Select Panel has now issued a total of three subpoenas to StemExpress and its Chief Executive Officer. Additionally, at least one former StemExpress employee has received a deposition subpoena from the Select Panel. StemExpress has repeatedly offered up a current employee with extensive experience with fetal tissue procurement and pricing as a corporate witness pursuant to Fed. R. Civ. P. 30(b)(6). Most recently, StemExpress offered its outside auditor and accountant as a potential witness. Rather than depose *any* of these individuals, the Select Panel appears intent on driving a predetermined narrative that suits its ends. This is incredibly disappointing to our client as the ultimate harm is to research and scientific breakthroughs that StemExpress has supported since its inception in 2010.

In light of the foregoing information, we respectfully request that the Select Panel withdraw or amend the Majority's proposed exhibits. Alternatively, we propose that tomorrow's hearing be held in a closed door executive session.

If you have any questions about this correspondence, please do not hesitate to contact me at [REDACTED]

Sincerely,



Amandeep S. Sidhu

cc (via email w/encl.):

Kerry W. Kircher, General Counsel, U.S. House of Representatives
March Bell, Select Panel Majority Staff Director
Heather Sawyer, Select Panel Minority Chief Counsel

EXHIBIT A

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT
 3
 4 STEMEXPRESS, LLC, et al.,)
 5 Plaintiffs,)
 6 vs.) No. BC 589145
 7 THE CENTER FOR MEDICAL PROGRESS,)
 8 BIOMAX PROCUREMENT SERVICES,)
 9 LLC, DAVID DALEIDEN (aka)
 10 "ROBERT SARKIS"), DOES 1 (aka)
 11 "SUSAN TENNENBAUM"), and DOES)
 12 2 through 100, inclusive,)
 13 Defendants.)
 14 _____
 15
 16
 17 Videotaped Deposition of DAVID DALEIDEN,
 18 Volume 1, taken at 2049 Century Park East,
 19 Suite 3800, Los Angeles, California, commencing at
 20 9:55 A.M., Wednesday, December 30, 2015, and ending
 21 at 6:41 P.M., before WENDY S. SCHREIBER, Certified
 22 Shorthand Reporter No. 3558.
 23
 24
 25

1 INDEX
 2 VOLUME 1
 3
 4 WEDNESDAY, DECEMBER 30, 2015
 5 WITNESS
 6 DAVID DALEIDEN EXAMINATION
 7 (By Mr. Weir) 9
 8 P. M. Session 113
 9
 10
 11 QUESTIONS NOT ANSWERED ON ADVICE OF COUNSEL
 12 PAGE LINE
 13 22 7
 14 23 5 & 14
 15 38 19
 16 44 8
 17 45 22
 18 46 25
 19 50 24
 20 51 8
 21 52 16 & 24
 22 72 13
 23 75 8
 24
 25

1 APPEARANCES OF COUNSEL:
 2
 3 For the Plaintiffs:
 4
 5 McDERMOTT, WILL & EMERY LLP
 6 BY: CHARLES E. WEIR, ESQ.
 7 GREGORY R. JONES, ESQ.
 8 
 9
 10
 11
 12
 13
 14
 15 For the Defendants:
 16
 17 FREEDOM OF CONSCIENCE DEFENSE FUND
 18 BY: CHARLES S. LIMANDRI, ESQ.
 19 PAUL M. JONNA, ESQ.
 20 
 21
 22
 23
 24
 25

1 DEPOSITION EXHIBITS
 2 DAVID DALEIDEN
 3 NUMBER DESCRIPTION PAGE
 4
 5 Exhibit 4 Executive Summary, CMP 00033 - 33
 6 CMP 00043
 7 Exhibit 5 Declaration of David Daleiden 41
 8 Exhibit 6 Letter dated 8/31/15 to Boehner 55
 9 from Daleiden, CMP 00251 -
 10 CMP 00265
 11 Exhibit 7 California Driver's License 71
 12 Exhibit 8 Defendants' Responses to Request 77
 13 for Production of Documents
 14 Propounded by Plaintiffs
 15 StemExpress, LLC
 16 Exhibit 9 Defendants' Memorandum of Points 78
 17 and Authorities in Support of
 18 Special Motion to Strike Plaintiffs'
 19 Complaint
 20 Exhibit 10 Article titled "Termination of 82
 21 pregnancy for fetal anomaly:
 22 a population-based study 1995 to
 23 2004, CMP 00005 - CMP 00008
 24
 25

| | |
|---|---|
| <p>1 DEPOSITION EXHIBITS (CONTINUED)</p> <p>2 DAVID DALEIDEN</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit 11 Article titled "Early Stem Cell 147</p> <p>6 Engraftment Predicts Late Cardiac</p> <p>7 Functional Recovery Preclinical</p> <p>8 Insights from Molecular Imaging,</p> <p>9 CMP 00045 - CMP 00080</p> <p>10 Exhibit 12 Article titled "Safe Genetic 147</p> <p>11 Modification of Cardiac Stem Cells</p> <p>12 Using a Site-Specific Integration</p> <p>13 Technique, CMP 00081 - CMP 00114</p> <p>14 Exhibit 13 Emka Technologies Website, 147</p> <p>15 CMP 00020 - CMP 00022</p> <p>16 Exhibit 14 Declaration of Theresa A. 147</p> <p>17 Deisher, Ph.D.</p> <p>18 Exhibit 15 Transcript by the Center for 166</p> <p>19 Medical Progress dtd. 10/12/14</p> <p>20 Exhibit 16 E-Mail dated 3/20/13 to O'Donnell 177</p> <p>21 from Reboin, CMP 00017 - CMP 00018</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 6</p> | <p>1 LOS ANGELES, CALIFORNIA; DECEMBER 30, 2015</p> <p>2 9:55 A.M. 09:44:51</p> <p>3 09:57:53</p> <p>4 VIDEO OPERATOR: Good morning. We are on 09:54:47</p> <p>5 the record. The time is 9:55 a.m. The date today 09:55:10</p> <p>6 is December 30th, 2015. 09:55:15</p> <p>7 This is the video-recorded deposition of 09:55:18</p> <p>8 David Daleiden. My name is David West, here with 09:55:22</p> <p>9 our court reporter, Wendy Schreiber. We are here 09:55:25</p> <p>10 from Veritext Legal Solutions at the request of 09:55:28</p> <p>11 counsel for Plaintiff. 09:55:30</p> <p>12 The deposition is being held at 2049 Century 09:55:30</p> <p>13 Park East, 38th Floor, Los Angeles, California. 09:55:35</p> <p>14 Case entitled StemExpress, LLC, et al., versus the 09:55:39</p> <p>15 Center for Medical Progress, et al., Case No. 09:55:44</p> <p>16 BC 589145. 09:55:47</p> <p>17 Please note that audio and video recording 09:55:50</p> <p>18 will take place unless all parties agree to go off 09:55:53</p> <p>19 the record. Microphones are sensitive and may pick 09:55:55</p> <p>20 up whispers, private conversations as well as 09:56:00</p> <p>21 cellular interference. 09:56:02</p> <p>22 I'm not authorized to administer an oath. 09:56:02</p> <p>23 I'm not related to any party in this action, nor am 09:56:05</p> <p>24 I financially interested in the outcome in any way. 09:56:07</p> <p>25 If there are any objections to proceeding, 09:56:10</p> <p style="text-align: right;">Page 8</p> |
| <p>1 PREVIOUSLY-MARKED EXHIBITS</p> <p>2 EXHIBIT PAGE</p> <p>3 Exhibit 1 64</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 7</p> | <p>1 please state them at the time of your appearance. 09:56:12</p> <p>2 Beginning with the noticing attorney, please state 09:56:15</p> <p>3 your appearances. 09:56:17</p> <p>4 MR. WEIR: Charles Weir of McDermott, Will & 09:56:19</p> <p>5 Emery, for Plaintiffs. 09:56:21</p> <p>6 MR. JONES: Gregory Jones, McDermott, Will & 09:56:22</p> <p>7 Emery, for Plaintiffs. 09:56:25</p> <p>8 MR. LiMANDRI: Charles LiMandri with the 09:56:25</p> <p>9 Freedom of Conscience Defense Fund for the 09:56:28</p> <p>10 Defendants. 09:56:28</p> <p>11 MR. JONNA: Paul Jonna with the Freedom of 09:56:31</p> <p>12 Conscience Defense Fund for the Defendants. 09:56:32</p> <p>13 VIDEO OPERATOR: Thank you. The court 09:56:33</p> <p>14 reporter may now swear in the witness and we will 09:56:35</p> <p>15 proceed. 09:56:37</p> <p>16</p> <p>17 DAVID DALEIDEN,</p> <p>18 having been first placed under oath, testified as</p> <p>19 follows:</p> <p>20</p> <p>21 EXAMINATION</p> <p>22 BY MR. WEIR:</p> <p>23 Q. Good morning, Mr. Daleiden. 09:56:48</p> <p>24 A. Good morning. 09:56:49</p> <p>25 Q. How are you? 09:56:49</p> <p style="text-align: right;">Page 9</p> |

1 MR. WEIR: Do you have the order handy, 06:12:12
2 Greg? 06:12:14
3 MR. LiMANDRI: I may be in the presence of 06:12:20
4 recordings and then -- 06:12:25
5 BY MR. WEIR: 06:12:25
6 Q. Did Holly O'Donnell ever -- I'll withdraw 06:12:26
7 the question. 06:12:29
8 Did Holly O'Donnell ever tell you that she 06:12:30
9 had a nondisclosure agreement with StemExpress? 06:12:34
10 A. No, she did not. 06:12:37
11 Q. Have you ever in your investigation of 06:12:38
12 companies in the abortion industry seen a situation 06:12:44
13 where they did have a nondisclosure agreement? 06:12:46
14 A. Can you clarify who you mean by "they"? 06:12:50
15 Q. The companies you were investigating in the 06:12:52
16 abortion industry. 06:12:54
17 A. It still seems like a really broad question. 06:12:56
18 Can you make that a little more specific for me? I 06:13:01
19 don't totally understand. 06:13:03
20 Q. Do you know that there are -- that employees 06:13:04
21 of companies in the abortion industry or fetal 06:13:06
22 tissue industry that it is common for them to sign 06:13:12
23 nondisclosure agreements? 06:13:15
24 MR. LiMANDRI: Objection: assumes facts not 06:13:16
25 in evidence and beyond the scope of the discovery 06:13:17

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1 order. 06:13:20
2 If you're comfortable answering, you can but 06:13:21
3 I don't think you're required to. 06:13:24
4 THE WITNESS: Yeah, I don't -- I don't think 06:13:25
5 it's necessarily common. I've encountered it in 06:13:28
6 some situations but I've also not encountered it in 06:13:32
7 some situations. I mean, part of why I asked you to 06:13:35
8 clarify the question is because -- is because while 06:13:38
9 I've seen confidentiality agreements and 06:13:42
10 nondisclosure agreements present in some situations, 06:13:44
11 they're not present in every situation. And so -- 06:13:47
12 and so I've -- you know, so I wasn't sure exactly 06:13:50
13 are you -- if you're just referring to, you know, 06:13:53
14 NDAs between employers and employees or between 06:13:57
15 potential business partners or -- there's lots of 06:14:00
16 different situations. 06:14:03
17 BY MR. WEIR: 06:14:05
18 Q. Well, let's start with the 06:14:05
19 employer/employee. 06:14:08
20 A. I -- I mean, like I said, I don't remember 06:14:09
21 Holly ever telling me that she had a nondisclosure 06:14:15
22 agreement or confidentiality agreement with 06:14:19
23 StemExpress. The first that I ever knew of that was 06:14:23
24 when I was browsing through all of the documents 06:14:26
25 that she had given me after the fact and I saw a -- 06:14:27

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1 I saw what appeared to be some confidentiality 06:14:30
2 portion incorporated into an employment contract. 06:14:33
3 Q. Those were the hard-copy documents? 06:14:36
4 A. I believe so. 06:14:38
5 Q. Okay. All right. So then -- was -- I think 06:14:39
6 you might have said this before but the -- I'm 06:14:51
7 getting tired, too. Was -- you had a log-in for 06:14:54
8 Holly's e-mail? 06:14:58
9 A. Holly gave me her user name and password. 06:15:02
10 Q. That's what I was going to ask. It was 06:15:04
11 password protected, correct? 06:15:07
12 A. I believe that's correct. 06:15:08
13 Q. Okay. All right. Let me check my notes. 06:15:09
14 Let's go off the record. With any luck we will be 06:15:12
15 done. 06:15:16
16 VIDEO OPERATOR: Off the record 6:15. 06:15:17
17 (Recess taken.) 06:18:20
18 VIDEO OPERATOR: On the record 6:18. 06:18:29
19 BY MR. WEIR: 06:18:33
20 Q. How did StemExpress first get on your radar? 06:18:34
21 A. StemExpress first got on my radar in 2011. 06:18:43
22 It was the summer of 2011 and -- and a friend of 06:18:49
23 mine was applying for -- or was looking for jobs in 06:18:55
24 community pregnancy centers on the Internet, on 06:19:01
25 Craig's List in Sacramento, and she -- and she 06:19:06

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1 discovered a Craig's List ad for StemExpress for 06:19:08
2 procurement technicians that talked about needing -- 06:19:11
3 because I think she was doing searches for -- search 06:19:14
4 terms like "abortion," "pregnancy center," "clinic 06:19:17
5 worker," stuff like that and she found this -- this 06:19:20
6 Craig's List ad for StemExpress procurement 06:19:22
7 technicians saying that they were hiring procurement 06:19:25
8 techs to work in Planned Parenthood clinics and work 06:19:28
9 in abortion clinics to harvest pregnancy tissue. 06:19:31
10 And so she took a screen shot of that, forwarded it 06:19:35
11 to me. And at that time I was already aware -- I 06:19:39
12 had been aware for about a year of Advanced 06:19:44
13 Bioscience Resources. I don't think I knew the 06:19:47
14 connection between StemExpress and ABR and between 06:19:49
15 Cate Dyer and ABR at that time but -- you know, but 06:19:52
16 ABR had been interesting to me for about a year at 06:19:56
17 that point since 2010 because -- you know, because I 06:19:59
18 knew that they were one of the -- they were this 06:20:03
19 really interesting, shadowy, reclusive fetal tissue 06:20:04
20 procurement company. But then StemExpress was even 06:20:08
21 more interesting in 2011 because not only, you know, 06:20:10
22 were they in the same business but they were an 06:20:13
23 explicitly for-profit company. 06:20:16
24 Q. Did you start investigating them 06:20:18
25 immediately? 06:20:21

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1 A. I -- in a certain sense, yeah, I began -- I 06:20:24
2 definitely began researching them. 06:20:31
3 Q. All right. I have no further questions. 06:20:37
4 MR. LiMANDRI: Okay. I have no questions. 06:20:45
5 MR. WEIR: You have no questions? 06:20:48
6 MR. LiMANDRI: No. 06:20:49
7 MR. WEIR: Okay. Why don't we go with the 06:20:50
8 same stipulations as yesterday if that's okay with 06:20:56
9 you? 06:20:59
10 MR. LiMANDRI: Fine, that's good. 06:20:59
11 MR. WEIR: And then let's go off the record 06:21:01
12 and talk about -- well, let's go off the record. 06:21:03
13 MR. LiMANDRI: Okay. 06:21:08
14 VIDEO OPERATOR: Off the record 6:21. 06:21:09
15 (Recess taken.) 06:41:01
16 VIDEO OPERATOR: The time is 6:41. We are 06:41:01
17 back on the record. This will conclude today's 06:41:09
18 testimony given by David Daleiden. The total number 06:41:10
19 of media used was four. They will be retained by 06:41:12
20 Veritext Legal Solutions. We are off the record at 06:41:15
21 6:41. 06:41:17
22 (TIME NOTED: 6:41 P.M.)
23
24
25

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.
12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [] was not requested.
16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.
19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.
21
22 Dated: January 4, 2016
23
24
25

Wendy S. Schreiber

WENDY S. SCHREIBER, CSR No. 3558

1 I, DAVID DALEIDEN, do hereby declare under
2 penalty of perjury that I have read the foregoing
3 transcript; that I have made any corrections as
4 appear noted, in ink, initialed by me, or attached
5 hereto; that my testimony as contained herein, as
6 corrected, is true and correct.
7 EXECUTED this _____,
8 20____, at _____,
9 California.
10
11
12
13 _____
14 DAVID DALEIDEN
15
16
17
18
19
20
21
22
23
24
25

California Code of Civil Procedure

Article 5. Transcript or Recording

Section 2025.520

(a) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the Original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time.

(b) For 30 days following each notice under subdivision (a), unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or

refuse to approve the transcript by not signing it.

(c) Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition.

(d) For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

(e) The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person.

(f) If the deponent fails or refuses to approve the transcript within the allotted period, the

deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent.

(g) Notwithstanding subdivision (f), on a seasonable motion to suppress the deposition, accompanied by a meet and confer declaration under Section 2016.040, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

(h) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition under this section, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

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EXHIBIT B



THE UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT *of* CALIFORNIA

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Department of Justice
U.S. Attorney's Office
Eastern District of California

FOR IMMEDIATE RELEASE

Tuesday, April 19, 2016

Washington Man Pleads Guilty to Sending Death Threats

SACRAMENTO, Calif. — Scott Anthony Orton, 57, of Puyallup, Washington, pleaded guilty today to transmitting interstate threats, United States Attorney Benjamin B. Wagner announced.

According to court documents, Orton posted several threatening statements on a popular news website in which he expressed his intent to travel to Placerville, California to kill an officer of the Placerville-based company, Stem Express LLC. On July 16, 2015, among other threats, Orton wrote, "The management of StemExpress should be taken by force and killed in the streets today. Kill StemExpress employees. I'll pay you for it." Orton also identified the target of his threats by name, and wrote "I'll pay ten grand to whomever beats me to [the target]."

"Terrorizing others through threats of violence, whether communicated in person or through media websites, is cruel, dangerous and disruptive, and is also a federal crime," said U.S. Attorney Wagner. "As Mr. Orton now knows, those who seek to terrorize others online will be identified and prosecuted."

This case is the product of an investigation by the Federal Bureau of Investigation. Assistant United States Attorney Brian A. Fogerty is prosecuting the case.

Orton is scheduled to be sentenced by United States District Judge John A. Mendez on August 2, 2016. Orton faces a maximum statutory penalty of five years in prison and a \$250,000 fine. The actual sentence, however, will be determined at the discretion of the court after consideration of any applicable statutory factors and the Federal Sentencing Guidelines, which take into account a number of variables.

2:15-cr-233-JAM

[USAO - California, Eastern](#)

Updated April 19, 2016

000148



EASTLAND ET AL. v. UNITED STATES SERVICEMEN'S FUND ET AL.

No. 73-1923

SUPREME COURT OF THE UNITED STATES

421 U.S. 491; 95 S. Ct. 1813; 44 L. Ed. 2d 324; 1975 U.S. LEXIS 65

Argued January 22, 1975

May 27, 1975

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUMMARY:

Pursuant to authority given by the United States Senate to make a complete and continuing study and investigation of the administration, operation and enforcement of the Internal Security Act of 1950, including discovery of the extent, nature and effect of subversive activities in the United States and inquiry concerning infiltration by persons who are or may be under the control of foreign governments, the Senate Subcommittee on Internal Security began an inquiry into the activities of the United States Servicemen's Fund, Inc. (USSF). In furtherance of this investigation, a subpoena duces tecum was issued on behalf of the Subcommittee, directing that a certain bank produce all its records pertaining to the USSF's account. The USSF and two of its members then brought an action in the United States District Court for the District of Columbia against the chairman of the Subcommittee, the other Senators who were members of the Subcommittee, the Subcommittee's chief counsel and the bank seeking to enjoin the implementation of the subpoena. The District Court, concluding that the legislative interest must prevail over the asserted rights of the organization and its members, denied motions for preliminary and permanent injunctions against the issuance of the subpoena and dismissed the action as to the Senators after concluding that the *speech or debate clause of Article I, 6, cl 1 of the United States Constitution* immunized them from suit. The United States Court of Appeals for the District of Columbia circuit, reversed, concluding that if the subpoena was obeyed, the *First Amendment* rights of the

organization and its members would be violated (*159 App DC 352, 488 F2d 1252*).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by Burger, Ch. J., expressing the view of five members of the court, it was held that the actions of the Subcommittee members and of the chief counsel were within the sphere of legislative activity for the purpose of applying the *speech and debate clause of Article I, 6, cl 1 of the United States Constitution* and that, accordingly, that clause afforded them immunity from judicial interference.

Marshall, J., joined by Brennan and Stewart, JJ., concurring in the judgment, agreed that the Senators and the chief counsel in the present case were protected by the *speech or debate clause*, but emphasized that the clause does not entirely immunize a congressional subpoena from challenge by a party not in a position to assert his constitutional rights by refusing to comply with it.

Douglas, J., dissented, expressing the view that the awesome powers delegated to individuals by the Constitution and by acts of Congress may not be used to deprive people of their *First Amendment* or other constitutional rights and that no official who is within the reach of judicial process, may invoke immunity for his actions for which wrongdoers normally suffer.

LAWYERS' EDITION HEADNOTES:

STATES §9

speech or debate clause -- immunity from interference with issuance of subpoena --

Headnote:[1A][1B]

421 U.S. 491, *, 95 S. Ct. 1813, **;
44 L. Ed. 2d 324, ***; 1975 U.S. LEXIS 65

accountability before a possibly hostile judiciary, *United States v. Johnson*, 383 U.S. 169, 181 (1966)," *Gravel v. United States*, *supra*, at 617. That role is not the sole function of the Clause, however, and English history does not totally define the reach of the Clause. Rather, it "must be interpreted in light of the American experience, and in the context of the American constitutional scheme of government..." *United States v. Brewster*, *supra*, at 508. Thus we have long held that, when it applies, the Clause provides protection against civil as well as criminal actions, and against actions brought by private individuals [*503] as well as those initiated by the Executive Branch. *Kilbourn v. Thompson*, *supra*; *Tenney v. Brandhove*, *supra*; *Doe v. McMillan*, *supra*; *Dombrowski v. Eastland*, *supra*.

[**LEdHR8] [8]The applicability of the Clause to private civil actions is supported by the absoluteness of the terms "shall not be questioned," and the sweep of the terms "in any other Place." In reading the Clause broadly we have said that legislators acting within the sphere of legitimate legislative activity "should be protected not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, *supra*, at 85. Just as a criminal prosecution infringes upon the independence which the Clause is designed to preserve, a private civil action, whether for an injunction or damages, creates a distraction and forces Members to divert their time, energy, and attention from their legislative tasks to defend the litigation. Private civil actions also may be used to delay and disrupt the legislative function. Moreover, whether a criminal action is instituted by the Executive Branch, or a civil action is brought by private parties, judicial power is still brought to bear on Members of Congress and legislative independence is imperiled. We reaffirm that once it is determined that Members are acting within the "legitimate legislative sphere" the *Speech or Debate Clause* is an absolute bar to interference. *Doe v. McMillan*, 412 U.S., at 314.

III

[**LEdHR9] [9]In determining whether particular activities other than literal speech or debate fall within the "legitimate legislative sphere" we look to see whether the activities took place "in a session of the House by one of its members in relation to the business before it." *Kilbourn v. Thompson*, 103 U.S., at 204. [**337] More specifically, we must determine whether the activities are S

"an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection [**1822] of

proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." *Gravel v. United States*, 408 U.S., at 625.I

See *Doe v. McMillan*, *supra*, at 313.

[**LEdHR10] [10] [**LEdHR11A] [**LEdHR12A] [**LEdHR13] [13]The power to investigate and to do so through compulsory process plainly falls within that definition. This Court has often noted that the power to investigate is inherent in the power to make laws because "[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927). See *Anderson v. Dunn*, 6 Wheat. 204 (1821); *United States v. Rumely*, 345 U.S. 41, 46 (1953).¹⁵ Issuance of subpoenas such as the one in question here has long been held to be a legitimate use by Congress of its power to investigate. *Watkins v. United States*, 354 U.S., at 188.

[**LEdHR11A] [**LEdHR12A]

15 Although the power to investigate is necessarily broad it is not unlimited. Its boundaries are defined by its source. *Watkins v. United States*, 354 U.S. 178, 197 (1957). Thus, "[t]he scope of the power of inquiry... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959); *Sinclair v. United States*, 279 U.S. 263, 291-292 (1929). We have made it clear, however, that Congress is not invested with a "general" power to inquire into private affairs." *McGrain v. Daugherty*, 273 U.S. 135, 173 (1927). The subject of any inquiry always must be one "on which legislation could be had." *Id.*, at 177.

S

"[W]here the legislative body does not itself possess [*505] the requisite information - which not infrequently is true - recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed." *McGrain v. Daugherty*, *supra*, at 175.I

It also has been held that the subpoena power may be exercised by a committee acting, as here, on behalf of one of the Houses. *Id.*, at 158. Cf. *Tenney v. Brandhove*, 341 U.S., at 377-378. Without such power



BARENBLATT v. UNITED STATES

No. 35

SUPREME COURT OF THE UNITED STATES

360 U.S. 109; 79 S. Ct. 1081; 3 L. Ed. 2d 1115; 1959 U.S. LEXIS 1809

November 18, 1958, Argued
June 8, 1959, Decided

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

DISPOSITION: 102 U. S. App. D. C. 217, 252 F.2d 129, affirmed.

SUMMARY:

Defendant, a former college teacher, was called as a witness before a subcommittee of the House Committee on Un-American Activities investigating Communist infiltration into the field of education. He refused to answer questions as to his membership in and affiliation with the Communist Party, and was convicted in the United States District Court for the District of Columbia for violating 2 USC 192, dealing with contempt of Congress and congressional committees. His conviction was affirmed by the *Court of Appeals for the District of Columbia Circuit* (100 App DC 13, 240 F2d 875) but, on certiorari, the judgment of the Court of Appeals was vacated, and the case remanded to that court for further consideration (354 US 930, 1 L. ed 2d 1533, 77 S Ct 1394). Thereafter the Court of Appeals reaffirmed the conviction by a divided court. (102 App DC 217, 252 F2d 129.)

On certiorari the United States Supreme Court affirmed. In an opinion by Harlan, J., expressing the views of five members of the Court, it was held that the subcommittee was legislatively authorized to investigate Communist infiltration into the field of education and that such authority was not subject to attack because of vagueness; that defendant was adequately apprised of the pertinency of the committee's questions to the subject matter of the inquiry; and that the questions defendant refused to answer did not infringe rights protected by the

First Amendment. It was held immaterial that the objective of the committee might have been purely one of exposure.

Black, J., with the concurrence of Warren, Ch. J., and Douglas, J., dissented, expressing the view that the rule creating the committee, because authorizing an indiscriminating compulsory examination of witnesses in the field of speech, press, petition, and assembly, violated procedural requirements of the *due process clause of the Fifth Amendment*; that compelling an answer to the questions asked the defendant abridged freedom of speech and association in contravention of the *First Amendment*; and that the committee proceedings were part of a legislative program to stigmatize and punish by public identification and exposure all witnesses considered by the committee to be guilty of Communist affiliations, and that the committee was thus improperly seeking to try, convict, and punish suspects.

Brennan, J., dissented on the ground that no purpose for the investigation of the defendant was revealed except exposure purely for the sake of exposure.

LAWYERS' EDITION HEADNOTES:

STATES §19

congressional inquiries. --

Headnote:[1]

The scope of the congressional power of inquiry involving the utilization of its committees to secure testimony needed to enable Congress efficiently to exercise its legislative function, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.

360 U.S. 109, *; 79 S. Ct. 1081, **;
3 L. Ed. 2d 1115, ***; 1959 U.S. LEXIS 1809

attainder and the doctrine of separation of powers. For such refusal, he was convicted of a violation of 2 U. S. C. § 192, which makes it a misdemeanor for any person summoned as a witness by either House of Congress or a committee thereof to refuse to answer any question pertinent to the question under inquiry. He was fined and sentenced to imprisonment for six months. *Held*: Petitioner's conviction is sustained. Pp. 111-134.

1. In the light of the Committee's history and the repeated extensions of its life, as well as the successive appropriations by the House of Representatives for the conduct of its activities, its legislative authority and that of the Subcommittee to conduct the inquiry under consideration here is unassailable; and House Rule XI, 83d Congress, which defines the Committee's authority, cannot be said to be constitutionally infirm on the score of vagueness. *Watkins v. United States*, 354 U.S. 178, distinguished. Pp. 116-123.

(a) Rule XI has a "persuasive gloss of legislative history" which shows beyond doubt that, in pursuance of its legislative concerns in the domain of "national security," the House of Representatives has clothed the Committee with pervasive authority to investigate Communist activities in this country. Pp. 117-121.

(b) In the light of the legislative history, Rule XI cannot be construed so as to exclude the field of education from the Committee's compulsory authority. Pp. 121-123.

2. The record in this case refutes petitioner's contention that he was not adequately apprised of the pertinency of the Subcommittee's questions to the subject matter of the inquiry. *Watkins v. United States*, *supra*, distinguished. Pp. 123-125.

3. On the record in this case, the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and, therefore, the provisions of the *First Amendment* were not transgressed by the Subcommittee's inquiry into petitioner's past or present membership in the Communist Party. Pp. 125-134.

(a) Where *First Amendment* rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. Pp. 126-127.

(b) The investigation here involved was related to a valid legislative purpose, since Congress has wide power to legislate in the field of Communist activity in this Country and to conduct appropriate investigations in aid thereof. Pp. 127-129.

(c) Investigatory power in this domain is not to be denied Congress solely because the field of education is involved, and the record in this case does not indicate any attempt by the Committee to inquire into the content of academic lectures or discussions, but only to investigate the extent to which the Communist Party had succeeded in infiltrating into our educational institutions persons and groups committed to furthering the Party's alleged objective of violent overthrow of the Government. *Sweezy v. New Hampshire*, 354 U.S. 234, distinguished. Pp. 129-132.

(d) On the record in this case, it cannot be said that the true objective of the Committee and of the Congress was purely "exposure," rather than furtherance of a valid legislative purpose. Pp. 132-133.

(e) The record is barren of other factors which in themselves might lead to the conclusion that the individual interests at stake were not subordinate to those of the Government. P. 134.

COUNSEL: Edward J. Ennis argued the cause for petitioner. With him on the brief were Nanette Dembitz and David Scribner.

Philip R. Monahan argued the cause for the United States. With him on the brief were Solicitor General Rankin, Acting Assistant Attorney General Yeagley and Doris H. Spangenburg.

Briefs of amici curiae urging reversal were filed by Ralph F. Fuchs and Leo A. Huard for the American Association of University Professors, and by Nathan Witt and John M. Coe for the National Lawyers Guild.

JUDGES: Warren, Black, Frankfurter, Douglas, Clark, Harlan, Brennan, Whittaker, Stewart

OPINION BY: HARLAN

OPINION

[*111] [***1120] [**1085] MR. JUSTICE HARLAN delivered the opinion of the Court.

[***LEdHR1] [1]Once more the Court is required to resolve the conflicting constitutional claims of congressional power and of an individual's right to resist its exercise. The congressional power in question concerns the internal process of Congress in moving within its legislative domain; it involves the utilization of its committees to secure "testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution." *McGrain v. Daugherty*, 273 U.S. 135, 160. The power of inquiry has been employed by Congress throughout our history, over the whole

360 U.S. 109, *; 79 S. Ct. 1081, **;
3 L. Ed. 2d 1115, ***; 1959 U.S. LEXIS 1809

range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and farreaching as the potential power to enact and appropriate under the Constitution.

***LEdHR2] [2] ***LEdHR3] [3] ***LEdHR4] [4]Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into ***1121] those areas in which it may potentially legislate or appropriate, [*112] it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. And the Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the *Bill of Rights*.

***LEdHR5] [5] ***LEdHR6] [6]The congressional power of inquiry, its range and scope, and an individual's duty in relation to it, must be viewed in proper perspective. *McGrain v. Daugherty, supra*; Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 214; Black, *Inside a Senate Investigation*, 172 Harpers Monthly 275 (February 1936). The power and the right of resistance to it are to be judged in the concrete, not on the basis of abstractions. In the present case congressional efforts to learn the extent of a nation-wide, indeed world-wide, problem have brought one of its investigating committees into the field of education. Of course, broadly viewed, inquiries cannot be made into the teaching that is pursued in any of our educational institutions. When academic teaching-freedom and its corollary learning-freedom, so essential to the well-being of the Nation, are claimed, this Court will always be on the alert against intrusion by Congress into this constitutionally protected domain. But this does not mean that the Congress is precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls.

[*113] In the setting of this framework of constitutional history, practice and legal precedents, we turn to the particularities of this case.

We here review petitioner's conviction under 2 U. S. C. § 192¹ [**1086] for contempt of Congress, arising from his refusal to answer certain questions put to him by a Subcommittee of the House Committee on Un-American Activities during the course of an inquiry concerning alleged Communist infiltration into the field of education.

1 "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$ 1,000 nor less than \$ 100 and imprisonment in a common jail for not less than one month nor more than twelve months."

The case is before us for the second time. Petitioner's conviction was originally affirmed in 1957 by a unanimous panel of the Court of Appeals, 100 U. S. App. D. C. 13, 240 F.2d 875. This Court granted certiorari, 354 U.S. 930, [***1122] vacated the judgment of the Court of Appeals, and remanded the case to that court for further consideration in light of *Watkins v. United States*, 354 U.S. 178, which had reversed a contempt of Congress conviction, and which was decided after the Court of Appeals' decision here had issued. Thereafter the Court of Appeals, sitting *en banc*, reaffirmed the conviction by a divided court. 102 U. S. App. D. C. 217, 252 F.2d 129. We again granted certiorari, 356 U.S. 929, to consider petitioner's statutory and constitutional challenges to his conviction, and particularly his claim that the judgment below cannot stand under our decision in the *Watkins* case.

Pursuant to a subpoena, and accompanied by counsel, petitioner on June 28, 1954, appeared as a witness before [*114] this congressional Subcommittee. After answering a few preliminary questions and testifying that he had been a graduate student and teaching fellow at the University of Michigan from 1947 to 1950 and an instructor in psychology at Vassar College from 1950 to shortly before his appearance before the Subcommittee, petitioner objected generally to the right of the Subcommittee to inquire into his "political" and "religious" beliefs or any "other personal and private affairs" or "associational activities," upon grounds set forth in a previously prepared memorandum which he was allowed to file with the Subcommittee.² Thereafter



WATKINS v. UNITED STATES

No. 261

SUPREME COURT OF THE UNITED STATES

354 U.S. 178; 77 S. Ct. 1173; 1 L. Ed. 2d 1273; 1957 U.S. LEXIS 1558; 76 Ohio L. Abs. 225

Argued March 7, 1957

June 17, 1957

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUMMARY:

A union officer, appearing as a witness before a subcommittee of the House Committee on Un-American Activities, refused to answer questions as to past Communist Party membership of certain persons, objecting to the questions on the ground of lack of pertinency to the subject under inquiry by the subcommittee. In a prosecution in the United States District Court for the District of Columbia, he was convicted of violating the statute providing for criminal punishment of witnesses before congressional committees who refuse to answer any question pertinent to the question under inquiry, and the conviction was affirmed by the *United States Court of Appeals for the District of Columbia Circuit* (98 App DC 190, 233 F2d 681).

On certiorari, the United States Supreme Court reversed the conviction. Warren, Ch. J., speaking for five members of the Court, ruled that to support a conviction under the statute a congressional investigating committee must, upon objection of a witness on the grounds of pertinency, state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. In the instant case, it was said, the evidence failed to show that the question under investigative inquiry at the time of the questioning was ever made known to the witness.

Frankfurter, J., concurred, also taking the view that the scope of the inquiry that a congressional committee is authorized to pursue must be defined with sufficient

clarity to safeguard a witness from the hazards of vagueness in the enforcement of the criminal process, and that there was no such definition in the instant case.

Clark, J., dissented, declaring that the pertinency to the matter under investigation of the questions asked the witness had been sufficiently shown.

Burton and Whittaker, JJ., did not participate.

LAWYERS' EDITION HEADNOTES:

STATES §19

power of Congress -- investigations. --

Headnote:[1]

The investigative power of Congress which is inherent in the legislative process is broad, encompassing inquiries concerning the administration of existing law as well as proposed or possibly needed statutes, including surveys of defects in our social, economic, or political system for the purpose of enabling the Congress to remedy them, and comprehending probes into departments of the federal government to expose corruption, inefficiency, or waste; but the congressional investigative power is not unlimited, and there is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.

LAW §48

separation of powers -- Congress. --

Headnote:[2]

354 U.S. 178, *; 77 S. Ct. 1173, **;
1 L. Ed. 2d 1273, ***; 1957 U.S. LEXIS 1558

Committee. Petitioner was asked separately about six persons, and these are the basis of the first six counts. The last count comprises the omnibus question that gave a list of twenty-five names for petitioner to identify. With two exceptions, the questions asked for knowledge of past membership in the Communist Party. The context of the interrogation indicates that the Committee's concern was with such past conduct. Petitioner agreed to and did disclose his knowledge of those he believed to be present members.

An appeal was taken to the Court of Appeals for the District of Columbia. The conviction was reversed by a three-judge panel, one member dissenting. Upon rehearing *en banc*, the full bench affirmed the conviction with the judges of the original majority in dissent. 98 U.S. App. D.C. 190, 233 F. 2d 681. We [**1179] granted certiorari [*187] because of the very important questions of constitutional law presented. 352 U.S. 822.

[**LEdHR1] [1] [**LEdHR2] [2] [**LEdHR3] [3] We start with several basic premises on which there is general agreement. The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. But, broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. This was freely conceded by the Solicitor General in his argument of this case. ⁸ Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated are indefensible.

8 "Now, we don't claim on behalf of the Government that there is any right to expose for the purposes of exposure. And I don't know that Congress has ever claimed any such right. But we do say, in the same breath, that there is a right to inform the public at the same time you inform the Congress."

[**LEdHR4] [4] [**LEdHR5] [5] It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify [*188] fully with respect to matters within the province of proper investigation. This, of course, assumes that the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice. The *Bill of Rights* is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the *First Amendment* freedoms of speech, press, religion, or political belief and association be abridged.

The rudiments of the power to punish for "contempt of Congress" come to us from the pages of English history. The origin of privileges and contempts extends back into the period of the emergence of Parliament. The establishment of a legislative body which could challenge the absolute power of the monarch is a long and bitter story. In that struggle, Parliament made broad and varied use of the contempt power. Almost from the beginning, both the House of Commons and the House of Lords claimed absolute and plenary authority over their privileges. This was an independent [**1285] body of law, described by Coke as *lex parliamenti*.⁹ Only Parliament could declare what those privileges were or what new privileges were occasioned, and only Parliament could judge what conduct constituted a breach of privilege.

9 Coke, Fourth Institute, 15.

In particular, this exclusion of *lex parliamenti* from the *lex terrae*, or law of the land, precluded judicial review of the exercise of the contempt power or the assertion of privilege. Parliament declared that no court had jurisdiction to consider such questions. In the latter part of the seventeenth century, an action for false imprisonment was brought by one Jay who had been held in contempt. The defendant, the Serjeant-at-Arms of [**1180] the House of Commons, demurred that he had taken the plaintiff [*189] into custody for breach of privilege. The Chief Justice, Pemberton, overruled the demurrer. Summoned to the bar of the House, the Chief Justice explained that he believed that the assertion of privilege went to the merits of the action and did not preclude jurisdiction. For his audacity, the Chief Justice was dispatched to Newgate Prison.¹⁰

10 H. Comm. J. (1688-1693) 227; *Jay v. Thopham*, 12 How. St. Tr. 822.



McGRAIN v. DAUGHERTY

No. 28

SUPREME COURT OF THE UNITED STATES

273 U.S. 135; 47 S. Ct. 319; 71 L. Ed. 580; 1927 U.S. LEXIS 985; 50 A.L.R. 1

December 5, 1924, Argued
January 17, 1927, Decided

PRIOR HISTORY: APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO.

APPEAL from a final order of the District Court, in habeas corpus, discharging the respondent, Mally S. Daugherty, from the custody of John J. McGrain, Deputy Sergeant at Arms of the Senate, by whom he had been arrested, as a contumacious witness, under a warrant of attachment, issued by the President of the Senate in pursuance of a Senate resolution.

DISPOSITION: 299 Fed. 620, reversed.

LAWYERS' EDITION HEADNOTES:

Sergeant at arms -- provision for deputy -- sufficiency. --

Headnote:

The adoption by the Senate of the United States of an order authorizing the appointment of deputies by the sergeant at arms, and the recognition by that body of the acts of such deputies and provision for their payment for services, are sufficient provisions of law for the appointment of such deputies.

Sergeant at arms -- execution of process by deputy. --

Headnote:

That a process is addressed by a legislative body to the sergeant at arms does not prevent its execution by his deputy where the resolution under which the warrant was issued plainly contemplates that a deputy could be directed to execute it.

Arrest -- warrant without oath -- report of Senate Committee. --

Headnote:

That a warrant for arrest was issued on report of a Senate committee, acting on its own knowledge without oath, does not invalidate it under the constitutional provision that no warrant shall issue but upon probable cause, supported by oath or affirmation, since the members of the committee were acting under their oath of office as Senators.

Witness -- refusal to appear and testify -- attachment. --

Headnote:

A refusal of a witness to obey a subpoena and appear and testify before the Senate of the United States will support a warrant requiring that he be brought before the bar of the Senate then and there to give testimony.

Injunction -- against interference with bank -- effect of attachment of president for refusal to testify. --

Headnote:

An order restraining members of a Senate committee from entering a banking room or interfering with the affairs of the bank, its officers, agents, servants, and the business of its depositors and customers, does not prevent the attachment of the president of the bank for refusal to appear before a committee of the Senate of the United States as a witness.

Congress -- power to compel attendance of witnesses. --

Headnote:

propounded be pertinent and otherwise legitimate -- which for present purposes must be assumed.

The first of the principal questions -- the one which the witness particularly presses on our attention -- is, as before shown, whether the Senate -- or the House of Representatives, both being on the same plane in this regard -- has power, through its own process, to compel a private individual to appear before it or one of its committees and give testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution.

The Constitution provides for a Congress consisting of a Senate and House of Representatives and invests it with "all legislative powers" granted to the United States, and with power "to make all laws which shall be necessary and proper" for carrying into execution these powers and "all other powers" vested by the Constitution in the United States or in any department or officer thereof. Art. I, secs 1, 8. Other provisions show that, while bills can become laws only after being considered and passed by both houses of Congress, each house is to be distinct [*161] from the other, to have its own officers and rules, and to exercise its legislative function independently.¹⁴ Art. I, secs. 2, 3, 5, 7. But there is no provision expressly investing either house with power to make investigations and exact testimony to the end that it may exercise its legislative function advisedly and effectively. So the question arises whether this power is so far incidental to the legislative function as to be implied.

¹⁴ Story Const., secs. 545, *et seq.*; 1 K:Dent's Com., p. 222.

In actual legislative practice power to secure needed information by such means has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament and in the Colonial legislatures before the American Revolution; and a like view has prevailed and been carried into effect in both houses of Congress and in most of the state legislatures.¹⁵

¹⁵ May's Parliamentary Practice, 2d ed., pp. 80, 295, 299; Cushing's Legislative Practice, secs. 634, 1901-1903; 3 Hinds' Precedents, secs. 1722, 1725, 1727, 1813-1820; Cooley's Constitutional Limitations, 6th ed., p. 161.

This power was both asserted and [***588] exerted by the House of Representatives in 1792, when it appointed a select committee to inquire into the St. Clair expedition and authorized the committee to send for necessary persons, papers and records. Mr. Madison, who had taken an important part in framing the Constitution only five years before, and four of his

associates in that work, were members of the House of Representatives at the time, and all voted for the inquiry. 3 Cong. Ann. 494. Other exertions of the power by the House of Representatives, as also by the Senate, are shown in the citations already made. Among those by the Senate, the inquiry ordered in 1859 respecting the raid by John Brown and his adherents on the armory and arsenal of the United States at Harper's Ferry is of special significance. The resolution [*162] directing the inquiry authorized the committee to send for persons and papers, to inquire into the facts pertaining to the raid and the means by which it was organized and supported, and to report what legislation, if any, was necessary to preserve the peace of the country and protect the public property. The resolution was briefly discussed and adopted without opposition. Cong. Globe, 36th Cong., 1st Sess., pp. 141, 152. Later on the committee reported that Thaddeus Hyatt, although subpoenaed to appear as a witness, had refused to do so; whereupon the Senate ordered that he be attached and brought before it to answer for his refusal. When he was brought in he answered by challenging the power of the Senate to direct the inquiry and exact testimony to aid it in exercising its legislative function. The question of power thus presented was thoroughly discussed by several senators -- Mr. Sumner of Massachusetts taking the lead in denying the power and Mr. Fessenden of Maine in supporting it. Sectional and party lines were put aside and the question was debated and determined with special regard to principle and precedent. The vote was taken on a resolution pronouncing the witness's answer insufficient and directing that he [**325] be committed until he should signify that he was ready and willing to testify. The resolution was adopted -- 44 senators voting for it and 10 against. Cong. Globe, 36th Cong., 1st Sess., pp. 1100-1109, 3006-3007. The arguments advanced in support of the power are fairly reflected by the following excerpts from the debate:

Mr. Fessenden of Maine. "Where will you stop? Stop, I say, just at that point where we have gone far enough to accomplish the purposes for which we were created; and these purposes are defined in the Constitution. What are they? The great purpose is legislation. There are some other things, but I speak of legislation as the principal purpose. Now, what do we propose to do here? We [*163] propose to legislate upon a given state of facts, perhaps, or under a given necessity. Well, sir, proposing to legislate, we want information. We have it not ourselves. It is not to be presumed that we know everything; and if any body does presume it, it is a very great mistake, as we know by experience. We want information on certain subjects. How are we to get it? The Senator says, ask for it. I am ready to ask for it; but suppose the person whom we ask will not give it to us: what then? Have we not

273 U.S. 135, *, 47 S. Ct. 319, **;
71 L. Ed. 580, ***; 1927 U.S. LEXIS 985

Next in order is *In re Chapman*, 166 U.S. 661. The inquiry there in question was conducted under a resolution of the Senate and related to [**328] charges, published in the press, that senators were yielding to corrupt influences in considering a tariff bill then before the Senate and were speculating in stocks the value of which would be affected by pending amendments to the bill. Chapman appeared before the committee in response to a subpoena, but refused to answer questions pertinent to the inquiry, and [*172] was indicted and convicted under the act of 1857 for his refusal. The Court sustained the constitutional validity of the act of 1857, and, after referring to the constitutional provision empowering either house to punish its members for disorderly behavior and by a vote of two-thirds to expel a member, held that the inquiry related to the integrity and fidelity of senators in the discharge of their duties, and therefore to a matter "within the range of the constitutional powers of the Senate" and in respect of which it could compel witnesses to appear and testify. In overruling an objection that the inquiry was without any defined or admissible purpose, in that the preamble and resolution made no reference to any contemplated expulsion, censure, or other action by the Senate, the Court held that they adequately disclosed a subject-matter of which the Senate had jurisdiction, that it was not essential that the Senate declare in advance what it meditated doing, and that the assumption could not be indulged that the Senate was making the inquiry without a legitimate object.

The case is relied on here as fully sustaining the power of either house to conduct investigations and exact testimony from witnesses for legislative purposes. In the course of the opinion (p. 671) it is said that disclosures by witnesses may be compelled constitutionally "to enable the respective bodies to discharge their legitimate functions, and that it was to effect this that the act of 1857 was passed"; and also "We grant that Congress could not divest itself, or either of its houses, of the essential and inherent power to punish for contempt, in cases to which the power of either house properly extended; but, because Congress, by the act of 1857, sought to aid each of the houses in the discharge of its constitutional functions, it does not follow that any delegation of the power in each to punish for contempt was involved." The terms "legitimate functions" and "constitutional functions" [*173] are broad and might well be regarded as including the legislative function, but as the case in hand did not call for any expression respecting that function, it hardly can be said that these terms were purposely used as including it.

The latest case is *Marshall v. Gordon*, 243 U.S. 521. The question there was whether the House of Representatives exceeded its power in punishing, as for a

contempt of its authority, a person -- not a member -- who had written, published and sent to the chairman of one of its committees an ill-tempered and irritating letter respecting the action and purposes of the committee. Power to make inquiries and obtain evidence by compulsory process was not involved. The Court recognized distinctly that the House of Representatives has implied power to punish a person not a member for contempt, as was ruled in *Anderson v. Dunn*, *supra*, but held that its action in this instance was without constitutional justification. The decision was put on the ground that the letter, while offensive and vexatious, was not calculated or likely to affect the House in any of its proceedings or in the exercise of any of its functions -- in short, that the act which was punished as a contempt was not of such a character as to bring it within the rule that an express power draws after it others which are necessary and appropriate to give effect to it.

While these cases are not decisive of the question we are considering, they definitely settle two propositions which [***593] we recognize as entirely sound and having a bearing on its solution: One, that the two houses of Congress, in their separate relations, possess not only such powers as are expressly granted to them by the Constitution, but such auxiliary powers as are necessary and appropriate to make the express powers effective; and, the other, that neither house is invested with "general" power to inquire into private affairs and compel disclosures, [*174] but only with such limited power of inquiry as is shown to exist when the rule of constitutional interpretation just stated is rightly applied. The latter proposition has further support in *Harriman v. Interstate Commerce Commission*, 211 U.S. 407, 417-419, and *Federal Trade Commission v. American Tobacco Company*, 264 U.S. 298, 305-306.

With this review of the legislative practice, congressional enactments and court decisions, we proceed to a statement of our conclusions on the question.

We are of opinion that the power of inquiry -- with process to enforce it -- is an essential and appropriate auxiliary to the legislative function. It was so regarded and employed in American legislatures before the Constitution was framed and ratified. Both houses of Congress took this view of it early in their history -- the House of Representatives with the approving votes of Mr. Madison and other members whose service in the convention which framed the Constitution gives special significance to their action -- and both houses have employed the power accordingly up to the present time. The acts of 1798 and 1857, judged by their comprehensive terms, were intended to recognize the existence of this power in both houses and to enable

them to employ it "more effectually" than before. So, when their practice in the matter is appraised [**329] according to the circumstances in which it was begun and to those in which it has been continued, it falls nothing short of a practical construction, long continued, of the constitutional provisions respecting their powers, and therefore should be taken as fixing the meaning of those provisions, if otherwise doubtful.¹⁹

19 *Stuart v. Laird*, 1 Cranch 299, 309; *Martin v. Hunter's Lessee*, 1 Wheat. 304, 351; *Ames v. Kansas*, 111 U.S. 449, 469; *Knowlton v. Moore*, 178 U.S. 41, 56, 92; *Fairbank v. United States*, 181 U.S. 283, 306, *et seq.*

[*175] We are further of opinion that the provisions are not of doubtful meaning, but, as was held by this Court in the cases we have reviewed, are intended to be effectively exercised, and therefore to carry with them such auxiliary powers as are necessary and appropriate to that end. While the power to exact information in aid of the legislative function was not involved in those cases, the rule of interpretation applied there is applicable here. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information -- which not infrequently is true -- recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry -- with enforcing process -- was regarded and employed as a necessary and appropriate attribute of the power to legislate -- indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.

The contention is earnestly made on behalf of the witness that this power of inquiry, if sustained, may be abusively and oppressively exerted. If this be so, it affords no ground for denying the power. The same contention might be directed against the power to legislate, and of course would be unavailing. We must assume, for present purposes, that neither house will be disposed to exert the power beyond its proper bounds, or without [*176] due regard to the rights of witnesses. But if, contrary to this assumption, controlling limitations or restrictions are disregarded, the decisions

in *Kilbourn v. Thompson* and *Marshall v. Gordon* point to admissible measures of relief. And it is a necessary deduction from the decisions in *Kilbourn v. Thompson* and *In re Chapman* that a witness rightfully may refuse to answer [***594] where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry.

We come now to the question whether it sufficiently appears that the purpose for which the witness's testimony was sought was to obtain information in aid of the legislative function. The court below answered the question in the negative and put its decision largely on this ground, as is shown by the following excerpts from its opinion (299 Fed. 638, 639, 640):

"It will be noted that in the second resolution the Senate has expressly avowed that the investigation is in aid of other action than legislation. Its purpose is to 'obtain information necessary as a basis for such legislative and other action as the Senate may deem necessary and proper.' This indicates that the Senate is contemplating the taking of action other than legislative, as the outcome of the investigation, at least the possibility of so doing. The extreme personal cast of the original resolutions; the spirit of hostility towards the then Attorney General which they breathe; that it was not avowed that legislative action was had in view until after the action of the Senate had been challenged; and that the avowal then was coupled with an avowal that other action was had in view -- are calculated to create the impression that the idea of legislative action being in contemplation was an afterthought.

"That the Senate has in contemplation the possibility of taking action other than legislation as an outcome of the investigation, as thus expressly avowed, would seem [*177] of itself to invalidate the entire proceeding. But, whether so or not, the Senate's action is invalid and absolutely void, in that, in ordering and conducting the investigation, it is exercising the judicial function, and power to exercise that function, in such a case as we have here, has not been conferred upon it expressly or by fair implication. What it is proposing to do is to determine the guilt of the Attorney General of the shortcomings and wrongdoings set forth in the resolutions. It is 'to hear, adjudge, and condemn.' In so doing it is exercising the judicial function.

"What the Senate is engaged in doing is not investigating the Attorney General's office; it is investigating the former Attorney General. What it has done is to put him on trial before it. In so doing it is exercising the judicial function. This it has no power to do."

We are of opinion that the court's ruling on this question was wrong, and that it sufficiently appears,

RULES OF THE HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

RULE I THE SPEAKER

Approval of the Journal

1. The Speaker shall take the Chair on every legislative day precisely at the hour to which the House last adjourned and immediately call the House to order. Having examined and approved the Journal of the last day's proceedings, the Speaker shall announce to the House approval thereof. The Speaker's approval of the Journal shall be deemed agreed to unless a Member, Delegate, or Resident Commissioner demands a vote thereon. If such a vote is decided in the affirmative, it shall not be subject to a motion to reconsider. If such a vote is decided in the negative, then one motion that the Journal be read shall be privileged, shall be decided without debate, and shall not be subject to a motion to reconsider.

Preservation of order

2. The Speaker shall preserve order and decorum and, in case of disturbance or disorderly conduct in the galleries or in the lobby, may cause the same to be cleared.

Control of Capitol facilities

3. Except as otherwise provided by rule or law, the Speaker shall have general control of the Hall of the House, the corridors and passages in the part of the Capitol assigned to the use of the House, and the disposal of unappropriated rooms in that part of the Capitol.

Signature of documents

4. The Speaker shall sign all acts and joint resolutions passed by the two Houses and all writs, warrants, and subpoenas of, or issued by order of, the House. The Speaker may sign enrolled bills and joint resolutions whether or not the House is in session.

Questions of order

5. The Speaker shall decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner. On such an appeal a Member, Delegate, or Resident Commissioner may not speak more than once without permission of the House.

Form of a question

6. The Speaker shall rise to put a question but may state it sitting. The Speaker shall put a question in this form: "Those in favor (of the question), say 'Aye.'"; and after the affirmative voice is expressed, "Those opposed, say 'No.'". After a vote by voice under this

clause, the Speaker may use such voting procedures as may be invoked under rule XX.

Discretion to vote

7. The Speaker is not required to vote in ordinary legislative proceedings, except when such vote would be decisive or when the House is engaged in voting by ballot.

Speaker pro tempore

8. (a) The Speaker may appoint a Member to perform the duties of the Chair. Except as specified in paragraph (b), such an appointment may not extend beyond three legislative days.

(b)(1) In the case of illness, the Speaker may appoint a Member to perform the duties of the Chair for a period not exceeding 10 days, subject to the approval of the House. If the Speaker is absent and has omitted to make such an appointment, then the House shall elect a Speaker pro tempore to act during the absence of the Speaker.

(2) With the approval of the House, the Speaker may appoint a Member to act as Speaker pro tempore only to sign enrolled bills and joint resolutions for a specified period of time.

(3)(A) In the case of a vacancy in the Office of Speaker, the next Member on the list described in subdivision (B) shall act as Speaker pro tempore until the election of a Speaker or a Speaker pro tempore. Pending such election the Member acting as Speaker pro tempore may exercise such authorities of the Office of Speaker as may be necessary and appropriate to that end.

(B) As soon as practicable after the election of the Speaker and whenever appropriate thereafter, the Speaker shall deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore under subdivision (A).

(C) For purposes of subdivision (A), a vacancy in the Office of Speaker may exist by reason of the physical inability of the Speaker to discharge the duties of the office.

Other responsibilities

9. The Speaker, in consultation with the Minority Leader, shall develop through an appropriate entity of the House a system for drug testing in the House. The system may provide for the testing of a Member, Delegate, Resident Commissioner, officer, or employee of the House, and otherwise shall be comparable in scope to the system for drug testing in the executive branch pursuant to Executive Order

12564 (Sept. 15, 1986). The expenses of the system may be paid from applicable accounts of the House for official expenses.

Designation of travel

10. The Speaker may designate a Member, Delegate, Resident Commissioner, officer, or employee of the House to travel on the business of the House within or without the United States, whether the House is meeting, has recessed, or has adjourned. Expenses for such travel may be paid from applicable accounts of the House described in clause 1(k)(1) of rule X on vouchers approved and signed solely by the Speaker.

Committee appointment

11. The Speaker shall appoint all select, joint, and conference committees ordered by the House. At any time after an original appointment, the Speaker may remove Members, Delegates, or the Resident Commissioner from, or appoint additional Members, Delegates, or the Resident Commissioner to, a select or conference committee. In appointing Members, Delegates, or the Resident Commissioner to conference committees, the Speaker shall appoint no less than a majority who generally supported the House position as determined by the Speaker, shall name those who are primarily responsible for the legislation, and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill or resolution passed or adopted by the House.

Recess and convening authorities

12. (a) To suspend the business of the House for a short time when no question is pending before the House, the Speaker may declare a recess subject to the call of the Chair.

(b)(1) To suspend the business of the House when notified of an imminent threat to its safety, the Speaker may declare an emergency recess subject to the call of the Chair.

(2) To suspend the business of the Committee of the Whole House on the state of the Union when notified of an imminent threat to its safety, the chair of the Committee of the Whole may declare an emergency recess subject to the call of the Chair.

(c) During any recess or adjournment of not more than three days, if the Speaker is notified by the Sergeant-at-Arms of an imminent impairment of the place of reconvening at the time previously appointed, then the Speaker

such privileges or rights before a court in the United States.

RULE IX

QUESTIONS OF PRIVILEGE

1. Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and second, those affecting the rights, reputation, and conduct of Members, Delegates, or the Resident Commissioner, individually, in their representative capacity only.

2. (a)(1) A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or offered as privileged under clause 1, section 7, article I of the Constitution, shall have precedence of all other questions except motions to adjourn. A resolution offered from the floor by a Member, Delegate, or Resident Commissioner other than the Majority Leader or the Minority Leader as a question of the privileges of the House shall have precedence of all other questions except motions to adjourn only at a time or place, designated by the Speaker, in the legislative schedule within two legislative days after the day on which the proponent announces to the House an intention to offer the resolution and the form of the resolution. Oral announcement of the form of the resolution may be dispensed with by unanimous consent.

(2) The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

(b) A question of personal privilege shall have precedence of all other questions except motions to adjourn.

RULE X

ORGANIZATION OF COMMITTEES

Committees and their legislative jurisdictions

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

(a) **Committee on Agriculture.**

(1) Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

(2) Agriculture generally.

(3) Agricultural and industrial chemistry.

(4) Agricultural colleges and experiment stations.

(5) Agricultural economics and research.

(6) Agricultural education extension services.

(7) Agricultural production and marketing and stabilization of prices of agricultural products, and commodities (not including distribution outside of the United States).

(8) Animal industry and diseases of animals.

(9) Commodity exchanges.

(10) Crop insurance and soil conservation.

(11) Dairy industry.

(12) Entomology and plant quarantine.

(13) Extension of farm credit and farm security.

(14) Inspection of livestock, poultry, meat products, and seafood and seafood products.

(15) Forestry in general and forest reserves other than those created from the public domain.

(16) Human nutrition and home economics.

(17) Plant industry, soils, and agricultural engineering.

(18) Rural electrification.

(19) Rural development.

(20) Water conservation related to activities of the Department of Agriculture.

(b) **Committee on Appropriations.**

(1) Appropriation of the revenue for the support of the Government.

(2) Rescissions of appropriations contained in appropriation Acts.

(3) Transfers of unexpended balances.

(4) Bills and joint resolutions reported by other committees that provide new entitlement authority as defined in section 3(9) of the Congressional Budget Act of 1974 and referred to the committee under clause 4(a)(2).

(5) Bills and joint resolutions that provide new budget authority, limitation on the use of funds, or other authority relating to new direct loan obligations and new loan guarantee commitments referencing section 504(b) of the Congressional Budget Act of 1974.

(c) **Committee on Armed Services.**

(1) Ammunition depots; forts; arsenals; and Army, Navy, and Air Force reservations and establishments.

(2) Common defense generally.

(3) Conservation, development, and use of naval petroleum and oil shale reserves.

(4) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally.

(5) Interoceanic canals generally, including measures relating to the maintenance, operation, and administration of interoceanic canals.

(6) Merchant Marine Academy and State Maritime Academies.

(7) Military applications of nuclear energy.

(8) Tactical intelligence and intelligence-related activities of the Department of Defense.

(9) National security aspects of merchant marine, including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference, and merchant marine officers and seamen as these matters relate to the national security.

(10) Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

(11) Scientific research and development in support of the armed services.

(12) Selective service.

(13) Size and composition of the Army, Navy, Marine Corps, and Air Force.

(14) Soldiers' and sailors' homes.

(15) Strategic and critical materials necessary for the common defense.

(16) Cemeteries administered by the Department of Defense.

(d) **Committee on the Budget.**

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under titles III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(e) **Committee on Education and the Workforce.**

(1) Child labor.

(2) Gallaudet University and Howard University and Hospital.

(3) Convict labor and the entry of goods made by convicts into interstate commerce.

(4) Food programs for children in schools.

(5) Labor standards and statistics.

(6) Education or labor generally.

(7) Mediation and arbitration of labor disputes.

(8) Regulation or prevention of importation of foreign laborers under contract.

(9) Workers' compensation.

(10) Vocational rehabilitation.

(11) Wages and hours of labor.

(12) Welfare of miners.

(13) Work incentive programs.

(f) Committee on Energy and Commerce.

(1) Biomedical research and development.

(2) Consumer affairs and consumer protection.

(3) Health and health facilities (except health care supported by payroll deductions).

(4) Interstate energy compacts.

(5) Interstate and foreign commerce generally.

(6) Exploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources.

(7) Conservation of energy resources.

(8) Energy information generally.

(9) The generation and marketing of power (except by federally chartered or Federal regional power marketing authorities); reliability and interstate transmission of, and ratemaking for, all power; and siting of generation facilities (except the installation of interconnections between Government waterpower projects).

(10) General management of the Department of Energy and management and all functions of the Federal Energy Regulatory Commission.

(11) National energy policy generally.

(12) Public health and quarantine.

(13) Regulation of the domestic nuclear energy industry, including regulation of research and development reactors and nuclear regulatory research.

(14) Regulation of interstate and foreign communications.

(15) Travel and tourism.

The committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy.

(g) Committee on Ethics.

The Code of Official Conduct.

(h) Committee on Financial Services.

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

(3) Financial aid to commerce and industry (other than transportation).

(4) Insurance generally.

(5) International finance.

(6) International financial and monetary organizations.

(7) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage there-

of; valuation and revaluation of the dollar.

(8) Public and private housing.

(9) Securities and exchanges.

(10) Urban development.

(i) Committee on Foreign Affairs.

(1) Relations of the United States with foreign nations generally.

(2) Acquisition of land and buildings for embassies and legations in foreign countries.

(3) Establishment of boundary lines between the United States and foreign nations.

(4) Export controls, including nonproliferation of nuclear technology and nuclear hardware.

(5) Foreign loans.

(6) International commodity agreements (other than those involving sugar), including all agreements for cooperation in the export of nuclear technology and nuclear hardware.

(7) International conferences and congresses.

(8) International education.

(9) Intervention abroad and declarations of war.

(10) Diplomatic service.

(11) Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

(12) International economic policy.

(13) Neutrality.

(14) Protection of American citizens abroad and expatriation.

(15) The American National Red Cross.

(16) Trading with the enemy.

(17) United Nations organizations.

(j) Committee on Homeland Security.

(1) Overall homeland security policy.

(2) Organization, administration, and general management of the Department of Homeland Security.

(3) Functions of the Department of Homeland Security relating to the following:

(A) Border and port security (except immigration policy and non-border enforcement).

(B) Customs (except customs revenue).

(C) Integration, analysis, and dissemination of homeland security information.

(D) Domestic preparedness for and collective response to terrorism.

(E) Research and development.

(F) Transportation security.

(k) Committee on House Administration.

(1) Appropriations from accounts for committee salaries and expenses (except for the Committee on Appropriations); House Information Resources; and allowance and expenses of Members, Delegates, the Resident Commissioner, offi-

cers, and administrative offices of the House.

(2) Auditing and settling of all accounts described in subparagraph (1).

(3) Employment of persons by the House, including staff for Members, Delegates, the Resident Commissioner, and committees; and reporters of debates, subject to rule VI.

(4) Except as provided in paragraph (r)(11), the Library of Congress, including management thereof; the House Library; statuary and pictures; acceptance or purchase of works of art for the Capitol; the Botanic Garden; and purchase of books and manuscripts.

(5) The Smithsonian Institution and the incorporation of similar institutions (except as provided in paragraph (r)(11)).

(6) Expenditure of accounts described in subparagraph (1).

(7) Franking Commission.

(8) Printing and correction of the Congressional Record.

(9) Accounts of the House generally.

(10) Assignment of office space for Members, Delegates, the Resident Commissioner, and committees.

(11) Disposition of useless executive papers.

(12) Election of the President, Vice President, Members, Senators, Delegates, or the Resident Commissioner; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally.

(13) Services to the House, including the House Restaurant, parking facilities, and administration of the House Office Buildings and of the House wing of the Capitol.

(14) Travel of Members, Delegates, and the Resident Commissioner.

(15) Raising, reporting, and use of campaign contributions for candidates for office of Representative, of Delegate, and of Resident Commissioner.

(16) Compensation, retirement, and other benefits of the Members, Delegates, the Resident Commissioner, officers, and employees of Congress.

(l) Committee on the Judiciary.

(1) The judiciary and judicial proceedings, civil and criminal.

(2) Administrative practice and procedure.

(3) Apportionment of Representatives.

(4) Bankruptcy, mutiny, espionage, and counterfeiting.

(5) Civil liberties.

(6) Constitutional amendments.

(7) Criminal law enforcement and criminalization.

(8) Federal courts and judges, and local courts in the Territories and possessions.

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(9) Immigration policy and non-border enforcement.

(10) Interstate compacts generally.

(11) Claims against the United States.

(12) Meetings of Congress; attendance of Members, Delegates, and the Resident Commissioner; and their acceptance of incompatible offices.

(13) National penitentiaries.

(14) Patents, the Patent and Trademark Office, copyrights, and trademarks.

(15) Presidential succession.

(16) Protection of trade and commerce against unlawful restraints and monopolies.

(17) Revision and codification of the Statutes of the United States.

(18) State and territorial boundary lines.

(19) Subversive activities affecting the internal security of the United States.

(m) Committee on Natural Resources.

(1) Fisheries and wildlife, including research, restoration, refuges, and conservation.

(2) Forest reserves and national parks created from the public domain.

(3) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(4) Geological Survey.

(5) International fishing agreements.

(6) Interstate compacts relating to apportionment of waters for irrigation purposes.

(7) Irrigation and reclamation, including water supply for reclamation projects and easements of public lands for irrigation projects; and acquisition of private lands when necessary to complete irrigation projects.

(8) Native Americans generally, including the care and allotment of Native American lands and general and special measures relating to claims that are paid out of Native American funds.

(9) Insular areas of the United States generally (except those affecting the revenue and appropriations).

(10) Military parks and battlefields, national cemeteries administered by the Secretary of the Interior, parks within the District of Columbia, and the erection of monuments to the memory of individuals.

(11) Mineral land laws and claims and entries thereunder.

(12) Mineral resources of public lands.

(13) Mining interests generally.

(14) Mining schools and experimental stations.

(15) Marine affairs, including coastal zone management (except for measures relating to oil and other pollution of navigable waters).

(16) Oceanography.

(17) Petroleum conservation on public lands and conservation of the radium supply in the United States.

(18) Preservation of prehistoric ruins and objects of interest on the public domain.

(19) Public lands generally, including entry, easements, and grazing thereon.

(20) Relations of the United States with Native Americans and Native American tribes.

(21) Trans-Alaska Oil Pipeline (except ratemaking).

(n) Committee on Oversight and Government Reform.

(1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

(o) Committee on Rules.

(1) Rules and joint rules (other than those relating to the Code of Official Conduct) and the order of business of the House.

(2) Recesses and final adjournments of Congress.

(p) Committee on Science, Space, and Technology.

(1) All energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories.

(2) Astronautical research and development, including resources, personnel, equipment, and facilities.

(3) Civil aviation research and development.

(4) Environmental research and development.

(5) Marine research.

(6) Commercial application of energy technology.

(7) National Institute of Standards and Technology, standardization of weights and measures, and the metric system.

(8) National Aeronautics and Space Administration.

(9) National Space Council.

(10) National Science Foundation.

(11) National Weather Service.

(12) Outer space, including exploration and control thereof.

(13) Science scholarships.

(14) Scientific research, development, and demonstration, and projects therefor.

(q) Committee on Small Business.
(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.

(2) Participation of small-business enterprises in Federal procurement and Government contracts.

(r) Committee on Transportation and Infrastructure.

(1) Coast Guard, including life-saving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy.

(2) Federal management of emergencies and natural disasters.

(3) Flood control and improvement of rivers and harbors.

(4) Inland waterways.

(5) Inspection of merchant marine vessels, lights and signals, life-saving equipment, and fire protection on such vessels.

(6) Navigation and laws relating thereto, including pilotage.

(7) Registering and licensing of vessels and small boats.

(8) Rules and international arrangements to prevent collisions at sea.

(9) The Capitol Building and the Senate and House Office Buildings.

(10) Construction or maintenance of roads and post roads (other than appropriations therefor).

(11) Construction or reconstruction, maintenance, and care of buildings and grounds of the Botanic Garden, the Library of Congress, and the Smithsonian Institution.

(12) Merchant marine (except for national security aspects thereof).

(13) Purchase of sites and construction of post offices, customhouses, Federal courthouses, and Government buildings within the District of Columbia.

(14) Oil and other pollution of navigable waters, including inland, coastal, and ocean waters.

(15) Marine affairs, including coastal zone management, as they relate to oil and other pollution of navigable waters.

(16) Public buildings and occupied or improved grounds of the United States generally.

(17) Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).

(18) Related transportation regulatory agencies (except the Transportation Security Administration).

(19) Roads and the safety thereof.

(20) Transportation, including civil aviation, railroads, water transportation, transportation safety (except automobile safety and transportation security functions of the Department of Homeland Security), transportation infrastructure, transportation labor, and railroad retirement and unemployment (except revenue measures related thereto).

(21) Water power.

(s) Committee on Veterans' Affairs.

(1) Veterans' measures generally.

(2) Cemeteries of the United States in which veterans of any war or conflict are or may be buried, whether in the United States or abroad (except cemeteries administered by the Secretary of the Interior).

(3) Compensation, vocational rehabilitation, and education of veterans.

(4) Life insurance issued by the Government on account of service in the Armed Forces.

(5) Pensions of all the wars of the United States, general and special.

(6) Readjustment of servicemembers to civil life.

(7) Servicemembers' civil relief.

(8) Veterans' hospitals, medical care, and treatment of veterans.

(t) Committee on Ways and Means.

(1) Customs revenue, collection districts, and ports of entry and delivery.

(2) Reciprocal trade agreements.

(3) Revenue measures generally.

(4) Revenue measures relating to insular possessions.

(5) Bonded debt of the United States, subject to the last sentence of clause 4(f).

(6) Deposit of public monies.

(7) Transportation of dutiable goods.

(8) Tax exempt foundations and charitable trusts.

(9) National social security (except health care and facilities programs that are supported from general revenues as opposed to payroll deductions and except work incentive programs).

General oversight responsibilities

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

(2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

(d)(1) Not later than February 15 of the first session of a Congress, each standing committee shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Oversight and Government Reform and to the Committee on House Administration. In developing its plan each committee shall, to the maximum extent feasible—

(A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies within its jurisdiction with the objective of ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies

and include in its plan an explanation of steps that have been or will be taken to ensure such coordination and cooperation;

(B) review specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals;

(C) give priority consideration to including in its plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority;

(D) have a view toward ensuring that all significant laws, programs, or agencies within its jurisdiction are subject to review every 10 years;

(E) have a view toward insuring against duplication of Federal programs; and

(F) include proposals to cut or eliminate programs, including mandatory spending programs, that are inefficient, duplicative, outdated, or more appropriately administered by State or local governments.

(2) Not later than March 31 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Oversight and Government Reform shall report to the House the oversight plans submitted by committees together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

(e) The Speaker, with the approval of the House, may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.

Special oversight functions

3. (a) The Committee on Appropriations shall conduct such studies and examinations of the organization and operation of executive departments and other executive agencies (including an agency the majority of the stock of which is owned by the United States) as it considers necessary to assist it in the determination of matters within its jurisdiction.

(b) The Committee on Armed Services shall review and study on a continuing basis laws, programs, and Government activities relating to international arms control and disarmament and the education of military dependents in schools.

(c) The Committee on the Budget shall study on a continuing basis the effect on budget outlays of relevant existing and proposed legislation and report the results of such studies to the House on a recurring basis.

(d) The Committee on Education and the Workforce shall review, study, and coordinate on a continuing basis laws, programs, and Government activities

relating to domestic educational programs and institutions and programs of student assistance within the jurisdiction of other committees.

(e) The Committee on Energy and Commerce shall review and study on a continuing basis laws, programs, and Government activities relating to nuclear and other energy and nonmilitary nuclear energy research and development including the disposal of nuclear waste.

(f) The Committee on Foreign Affairs shall review and study on a continuing basis laws, programs, and Government activities relating to customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

(g)(1) The Committee on Homeland Security shall review and study on a continuing basis all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department of Homeland Security.

(2) In addition, the committee shall review and study on a primary and continuing basis all Government activities, programs and organizations related to homeland security that fall within its primary legislative jurisdiction.

(h) The Committee on Natural Resources shall review and study on a continuing basis laws, programs, and Government activities relating to Native Americans.

(i) The Committee on Oversight and Government Reform shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.

(j) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings and recommendations to the House from time to time.

(k) The Committee on Science, Space, and Technology shall review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.

(l) The Committee on Small Business shall study and investigate on a continuing basis the problems of all types of small business.

(m) The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of entities described in clause 11(b)(1)(A).

Additional functions of committees

4. (a)(1)(A) The Committee on Appropriations shall, within 30 days after the transmittal of the Budget to Congress each year, hold hearings on the Budget as a whole with particular reference to—

(i) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and

(ii) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.

(B) In holding hearings under subdivision (A), the committee shall receive testimony from the Secretary of the Treasury, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and such other persons as the committee may desire.

(C) A hearing under subdivision (A), or any part thereof, shall be held in open session, except when the committee, in open session and with a quorum present, determines by record vote that the testimony to be taken at that hearing on that day may be related to a matter of national security. The committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy thereof furnished to each Member, Delegate, and the Resident Commissioner.

(D) A hearing under subdivision (A), or any part thereof, may be held before a joint meeting of the committee and the Committee on Appropriations of the Senate in accordance with such procedures as the two committees jointly may determine.

(2) Pursuant to section 401(b)(2) of the Congressional Budget Act of 1974, when a committee reports a bill or joint resolution that provides new entitlement authority as defined in section 3(9) of that Act, and enactment of the bill or joint resolution, as reported, would cause a breach of the committee's pertinent allocation of new budget authority under section 302(a) of that Act, the bill or joint resolution may be referred to the Committee on Appropriations with instructions to report it with recommendations (which may include an amendment limiting the total amount of new entitlement authority provided in the bill or joint resolution). If the Committee on Appropriations fails to report a bill or joint resolution so referred within 15 calendar days (not counting any day on which the House is not in session), the committee automatically shall be discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(3) In addition, the Committee on Appropriations shall study on a continuing basis those provisions of law that (on the first day of the first fiscal year for which the congressional budget process is effective) provide spending authority or permanent budget authority and shall report to the House from time to time its recommendations for terminating or modifying such provisions.

(4) In the manner provided by section 302 of the Congressional Budget Act of 1974, the Committee on Appropriations (after consulting with the Committee

on Appropriations of the Senate) shall subdivide any allocations made to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and promptly report the subdivisions to the House as soon as practicable after a concurrent resolution on the budget for a fiscal year is agreed to.

(b) The Committee on the Budget shall—

(1) review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) hold hearings and receive testimony from Members, Senators, Delegates, the Resident Commissioner, and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it considers desirable in developing concurrent resolutions on the budget for each fiscal year;

(3) make all reports required of it by the Congressional Budget Act of 1974;

(4) study on a continuing basis those provisions of law that exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and report to the House from time to time its recommendations for terminating or modifying such provisions;

(5) study on a continuing basis proposals designed to improve and facilitate the congressional budget process, and report to the House from time to time the results of such studies, together with its recommendations; and

(6) request and evaluate continuing studies of tax expenditures, devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and report the results of such studies to the House on a recurring basis.

(c)(1) The Committee on Oversight and Government Reform shall—

(A) receive and examine reports of the Comptroller General of the United States and submit to the House such recommendations as it considers necessary or desirable in connection with the subject matter of the reports;

(B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(C) study intergovernmental relationships between the United States and the States and municipalities and between the United States and international organizations of which the United States is a member.

(2) In addition to its duties under subparagraph (1), the Committee on Oversight and Government Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. The findings and recommendations of the committee in such an investigation shall be made

available to any other standing committee having jurisdiction over the matter involved.

(3)(A) The Committee on Oversight and Government Reform may adopt a rule authorizing and regulating the taking of depositions by a member or counsel of the committee, including pursuant to subpoena under clause 2(m) of rule XI (which hereby is made applicable for such purpose).

(B) A rule adopted by the committee pursuant to this subparagraph—

(i) may provide that a deponent be directed to subscribe an oath or affirmation before a person authorized by law to administer the same;

(ii) shall ensure that the minority members and staff of the committee are accorded equitable treatment with respect to notice of and a reasonable opportunity to participate in any proceeding conducted thereunder; and

(iii) shall, unless waived by the deponent, require the attendance of a member of the committee.

(C) Information secured pursuant to the authority described in subdivision (A) shall retain the character of discovery until offered for admission in evidence before the committee, at which time any proper objection shall be timely.

(d)(1) The Committee on House Administration shall—

(A) provide policy direction for the Chief Administrative Officer and the Inspector General and oversight of the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Inspector General;

(B) oversee the management of services provided to the House by the Architect of the Capitol, except those services that lie within the jurisdiction of the Committee on Transportation and Infrastructure under clause 1(r);

(C) have the function of accepting on behalf of the House a gift, except as otherwise provided by law, if the gift does not involve a duty, burden, or condition, or is not made dependent on some future performance by the House;

(D) promulgate regulations to carry out subdivision (C); and

(E) establish and maintain standards for making documents publicly available in electronic form by the House and its committees.

(2) An employing office of the House may enter into a settlement of a complaint under the Congressional Accountability Act of 1995 that provides for the payment of funds only after receiving the joint approval of the chair and ranking minority member of the Committee on House Administration concerning the amount of such payment.

(e)(1) Each standing committee shall, in its consideration of all public bills and public joint resolutions within its jurisdiction, ensure that appropriations for continuing programs and activities of the Federal Government and

the government of the District of Columbia will be made annually to the maximum extent feasible and consistent with the nature, requirement, and objective of the programs and activities involved. In this subparagraph programs and activities of the Federal Government and the government of the District of Columbia includes programs and activities of any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(2) Each standing committee shall review from time to time each continuing program within its jurisdiction for which appropriations are not made annually to ascertain whether the program should be modified to provide for annual appropriations.

Budget Act responsibilities

(f)(1) Each standing committee shall submit to the Committee on the Budget not later than six weeks after the submission of the budget by the President, or at such time as the Committee on the Budget may request—

(A) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year that are within its jurisdiction or functions; and

(B) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year.

(2) The views and estimates submitted by the Committee on Ways and Means under subparagraph (1) shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the public debt that should be set forth in the concurrent resolution on the budget.

Election and membership of standing committees

5. (a)(1) The standing committees specified in clause 1 shall be elected by the House within seven calendar days after the commencement of each Congress, from nominations submitted by the respective party caucus or conference. A resolution proposing to change the composition of a standing committee shall be privileged if offered by direction of the party caucus or conference concerned.

(2)(A) The Committee on the Budget shall be composed of members as follows:

(i) Members, Delegates, or the Resident Commissioner who are members of other standing committees, including five from the Committee on Appropriations, five from the Committee on Ways and Means, and one from the Committee on Rules;

(ii) one Member designated by the elected leadership of the majority party; and

(iii) one Member designated by the elected leadership of the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on the Budget other than one described in subdivision (A)(ii) or (A)(iii) may not serve on the committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A Member, Delegate, or Resident Commissioner may exceed the limitation of subdivision (B) if elected to serve a second consecutive Congress as the chair or a second consecutive Congress as the ranking minority member.

(3)(A) The Committee on Ethics shall be composed of 10 members, five from the majority party and five from the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on Ethics may not serve on the committee during more than three Congresses in a period of five successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A member of the Committee on Ethics may serve on the committee during a fourth Congress in a period of five successive Congresses only as either the chair or the ranking minority member of the committee.

(4)(A) At the beginning of a Congress, the Speaker or a designee and the Minority Leader or a designee each shall name 10 Members, Delegates, or the Resident Commissioner from the respective party of such individual who are not members of the Committee on Ethics to be available to serve on investigative subcommittees of that committee during that Congress. The lists of Members, Delegates, or the Resident Commissioner so named shall be announced to the House.

(B) Whenever the chair and the ranking minority member of the Committee on Ethics jointly determine that Members, Delegates, or the Resident Commissioner named under subdivision (A) should be assigned to serve on an investigative subcommittee of that committee, each of them shall select an equal number of such Members, Delegates, or Resident Commissioner from the respective party of such individual to serve on that subcommittee.

(b)(1) Membership on a standing committee during the course of a Congress shall be contingent on continuing membership in the party caucus or conference that nominated the Member, Delegate, or Resident Commissioner concerned for election to such committee. Should a Member, Delegate, or Resident Commissioner cease to be a member of a particular party caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of each standing committee to which elected on the basis of nomination by that caucus or conference. The

chair of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of that caucus or conference. The Speaker shall notify the chair of each affected committee that the election of such Member, Delegate, or Resident Commissioner to the committee is automatically vacated under this subparagraph.

(2)(A) Except as specified in subdivision (B), a Member, Delegate, or Resident Commissioner may not serve simultaneously as a member of more than two standing committees or more than four subcommittees of the standing committees.

(B)(i) Ex officio service by a chair or ranking minority member of a committee on each of its subcommittees under a committee rule does not count against the limitation on subcommittee service.

(ii) Service on an investigative subcommittee of the Committee on Ethics under paragraph (a)(4) does not count against the limitation on subcommittee service.

(iii) Any other exception to the limitations in subdivision (A) may be approved by the House on the recommendation of the relevant party caucus or conference.

(C) In this subparagraph the term "subcommittee" includes a panel (other than a special oversight panel of the Committee on Armed Services), task force, special subcommittee, or other subunit of a standing committee that is established for a cumulative period longer than six months in a Congress.

(c)(1) One of the members of each standing committee shall be elected by the House, on the nomination of the majority party caucus or conference, as chair thereof. In the absence of the member serving as chair, the member next in rank (and so on, as often as the case shall happen) shall act as chair. Rank shall be determined by the order members are named in resolutions electing them to the committee. In the case of a vacancy in the elected chair of a committee, the House shall elect another chair.

(2) Except in the case of the Committee on Rules, a member of a standing committee may not serve as chair of the same standing committee, or of the same subcommittee of a standing committee, during more than three consecutive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(d)(1) Except as permitted by subparagraph (2), a committee may have not more than five subcommittees.

(2) A committee that maintains a subcommittee on oversight may have not more than six subcommittees. The Committee on Appropriations may have not more than 13 subcommittees. The Committee on Oversight and Government Reform may have not more than seven subcommittees.

(e) The House shall fill a vacancy on a standing committee by election on the nomination of the respective party caucus or conference.

Expense resolutions

6. (a) Whenever a committee, commission, or other entity (other than the Committee on Appropriations) is granted authorization for the payment of its expenses (including staff salaries) for a Congress, such authorization initially shall be procured by one primary expense resolution reported by the Committee on House Administration. A primary expense resolution may include a reserve fund for unanticipated expenses of committees. An amount from such a reserve fund may be allocated to a committee only by the approval of the Committee on House Administration. A primary expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of the funds to be provided to the committee, commission, or other entity under the primary expense resolution for all anticipated activities and programs of the committee, commission, or other entity; and

(2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities and programs of the committee, commission, or other entity as may be appropriate to provide the House with basic estimates of the expenditures contemplated by the primary expense resolution.

(b) After the date of adoption by the House of a primary expense resolution for a committee, commission, or other entity for a Congress, authorization for the payment of additional expenses (including staff salaries) in that Congress may be procured by one or more supplemental expense resolutions reported by the Committee on House Administration, as necessary. A supplemental expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of additional funds to be provided to the committee, commission, or other entity under the supplemental expense resolution and the purposes for which those additional funds are available; and

(2) state the reasons for the failure to procure the additional funds for the committee, commission, or other entity by means of the primary expense resolution.

(c) The preceding provisions of this clause do not apply to—

(1) a resolution providing for the payment from committee salary and expense accounts of the House of

sums necessary to pay compensation for staff services performed for, or to pay other expenses of, a committee, commission, or other entity at any time after the beginning of an odd-numbered year and before the date of adoption by the House of the primary expense resolution described in paragraph (a) for that year; or

(2) a resolution providing each of the standing committees in a Congress additional office equipment, airmail and special-delivery postage stamps, supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from committee salary and expense accounts of the House of the expenses of any of the foregoing items provided by that resolution, subject to and until enactment of the provisions of the resolution as permanent law.

(d) From the funds made available for the appointment of committee staff by a primary or additional expense resolution, the chair of each committee shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the committee and that the minority party is treated fairly in the appointment of such staff.

(e) Funds authorized for a committee under this clause and clauses 7 and 8 are for expenses incurred in the activities of the committee.

Interim funding

7. (a) For the period beginning at noon on January 3 and ending at midnight on March 31 in each odd-numbered year, such sums as may be necessary shall be paid out of the committee salary and expense accounts of the House for continuance of necessary investigations and studies by—

(1) each standing and select committee established by these rules; and

(2) except as specified in paragraph (b), each select committee established by resolution.

(b) In the case of the first session of a Congress, amounts shall be made available for a select committee established by resolution in the preceding Congress only if—

(1) a resolution proposing to reestablish such select committee is introduced in the present Congress; and

(2) the House has not adopted a resolution of the preceding Congress providing for termination of funding for investigations and studies by such select committee.

(c) Each committee described in paragraph (a) shall be entitled for each month during the period specified in paragraph (a) to 9 percent (or such lesser percentage as may be determined by the Committee on House Administration) of the total annualized amount made available under expense resolutions for such committee in the preceding session of Congress.

(d) Payments under this clause shall be made on vouchers authorized by the committee involved, signed by the chair of the committee, except as provided in paragraph (e), and approved by the Committee on House Administration.

(e) Notwithstanding any provision of law, rule of the House, or other authority, from noon on January 3 of the first session of a Congress until the election by the House of the committee concerned in that Congress, payments under this clause shall be made on vouchers signed by the ranking member of the committee as it was constituted at the expiration of the preceding Congress who is a member of the majority party in the present Congress.

(f)(1) The authority of a committee to incur expenses under this clause shall expire upon adoption by the House of a primary expense resolution for the committee.

(2) Amounts made available under this clause shall be expended in accordance with regulations prescribed by the Committee on House Administration.

(3) This clause shall be effective only insofar as it is not inconsistent with a resolution reported by the Committee on House Administration and adopted by the House after the adoption of these rules.

Travel

8. (a) Local currencies owned by the United States shall be made available to the committee and its employees engaged in carrying out their official duties outside the United States or its territories or possessions. Appropriated funds, including those authorized under this clause and clause 6, may not be expended for the purpose of defraying expenses of members of a committee or its employees in a country where local currencies are available for this purpose.

(b) The following conditions shall apply with respect to travel outside the United States or its territories or possessions:

(1) A member or employee of a committee may not receive or expend local currencies for subsistence in a country for a day at a rate in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for the expenses of such individual for a day at the lesser of—

(A) the per diem set forth in applicable Federal law; or

(B) the actual, unreimbursed expenses (other than for transportation) incurred during that day.

(3) Each member or employee of a committee shall make to the chair of the committee an itemized report showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished, and funds expended for any other official purpose and shall summarize in these categories the total foreign currencies or appropriated

funds expended. Each report shall be filed with the chair of the committee not later than 60 days following the completion of travel for use in complying with reporting requirements in applicable Federal law and shall be open for public inspection.

(c)(1) In carrying out the activities of a committee outside the United States in a country where local currencies are unavailable, a member or employee of a committee may not receive reimbursement for expenses (other than for transportation) in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for the expenses of such individual for a day, at the lesser of—

(A) the per diem set forth in applicable Federal law; or

(B) the actual unreimbursed expenses (other than for transportation) incurred during that day.

(3) A member or employee of a committee may not receive reimbursement for the cost of any transportation in connection with travel outside the United States unless the member or employee actually paid for the transportation.

(d) The restrictions respecting travel outside the United States set forth in paragraph (c) also shall apply to travel outside the United States by a Member, Delegate, Resident Commissioner, officer, or employee of the House authorized under any standing rule.

Committee staffs

9. (a)(1) Subject to subparagraph (2) and paragraph (f), each standing committee may appoint, by majority vote, not more than 30 professional staff members to be compensated from the funds provided for the appointment of committee staff by primary and additional expense resolutions. Each professional staff member appointed under this subparagraph shall be assigned to the chair and the ranking minority member of the committee, as the committee considers advisable.

(2) Subject to paragraph (f) whenever a majority of the minority party members of a standing committee (other than the Committee on Ethics or the Permanent Select Committee on Intelligence) so request, not more than 10 persons (or one-third of the total professional committee staff appointed under this clause, whichever is fewer) may be selected, by majority vote of the minority party members, for appointment by the committee as professional staff members under subparagraph (1). The committee shall appoint persons so selected whose character and qualifications are acceptable to a majority of the committee. If the committee determines that the character and qualifications of a person so selected are unacceptable, a majority of the minority party members may select another person for appointment by the committee to the professional staff until such appointment is made. Each professional staff member appointed

under this subparagraph shall be assigned to such committee business as the minority party members of the committee consider advisable.

(b)(1) The professional staff members of each standing committee—

(A) may not engage in any work other than committee business during congressional working hours; and

(B) may not be assigned a duty other than one pertaining to committee business.

(2)(A) Subparagraph (1) does not apply to staff designated by a committee as "associate" or "shared" staff who are not paid exclusively by the committee, provided that the chair certifies that the compensation paid by the committee for any such staff is commensurate with the work performed for the committee in accordance with clause 8 of rule XXIII.

(B) The use of any "associate" or "shared" staff by a committee other than the Committee on Appropriations shall be subject to the review of, and to any terms, conditions, or limitations established by, the Committee on House Administration in connection with the reporting of any primary or additional expense resolution.

(c) Each employee on the professional or investigative staff of a standing committee shall be entitled to pay at a single gross per annum rate, to be fixed by the chair and that does not exceed the maximum rate of pay as in effect from time to time under applicable provisions of law.

(d) Subject to appropriations hereby authorized, the Committee on Appropriations may appoint by majority vote such staff as it determines to be necessary (in addition to the clerk of the committee and assistants for the minority). The staff appointed under this paragraph, other than minority assistants, shall possess such qualifications as the committee may prescribe.

(e) A committee may not appoint to its staff an expert or other personnel detailed or assigned from a department or agency of the Government except with the written permission of the Committee on House Administration.

(f) If a request for the appointment of a minority professional staff member under paragraph (a) is made when no vacancy exists for such an appointment, the committee nevertheless may appoint under paragraph (a) a person selected by the minority and acceptable to the committee. A person so appointed shall serve as an additional member of the professional staff of the committee until such a vacancy occurs (other than a vacancy in the position of head of the professional staff, by whatever title designated), at which time that person is considered as appointed to that vacancy. Such a person shall be paid from the applicable accounts of the House described in clause 1(k)(1) of rule X. If such a vacancy occurs on the professional staff when seven or more persons have been so appointed who are eligible to fill that vacancy, a majority of the minority

party members shall designate which of those persons shall fill the vacancy.

(g) Each staff member appointed pursuant to a request by minority party members under paragraph (a), and each staff member appointed to assist minority members of a committee pursuant to an expense resolution described in clause 6(a), shall be accorded equitable treatment with respect to the fixing of the rate of pay, the assignment of work facilities, and the accessibility of committee records.

(h) Paragraph (a) may not be construed to authorize the appointment of additional professional staff members of a committee pursuant to a request under paragraph (a) by the minority party members of that committee if 10 or more professional staff members provided for in paragraph (a)(1) who are satisfactory to a majority of the minority party members are otherwise assigned to assist the minority party members.

(i) Notwithstanding paragraph (a)(2), a committee may employ nonpartisan staff, in lieu of or in addition to committee staff designated exclusively for the majority or minority party, by an affirmative vote of a majority of the members of the majority party and of a majority of the members of the minority party.

Select and joint committees

10. (a) Membership on a select or joint committee appointed by the Speaker under clause 11 of rule I during the course of a Congress shall be contingent on continuing membership in the party caucus or conference of which the Member, Delegate, or Resident Commissioner concerned was a member at the time of appointment. Should a Member, Delegate, or Resident Commissioner cease to be a member of that caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of any select or joint committee to which assigned. The chair of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of a party caucus or conference. The Speaker shall notify the chair of each affected select or joint committee that the appointment of such Member, Delegate, or Resident Commissioner to the select or joint committee is automatically vacated under this paragraph.

(b) Each select or joint committee, other than a conference committee, shall comply with clause 2(a) of rule XI unless specifically exempted by law.

Permanent Select Committee on Intelligence

11. (a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the "select committee"). The select committee shall be composed of not more than 22 Members, Delegates, or the Resident Commissioner, of whom not more than 13 may

be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

(A) the Committee on Appropriations;

(B) the Committee on Armed Services;

(C) the Committee on Foreign Affairs; and

(D) the Committee on the Judiciary.

(2) The Speaker and the Minority Leader shall be ex officio members of the select committee but shall have no vote in the select committee and may not be counted for purposes of determining a quorum thereof.

(3) The Speaker and Minority Leader each may designate a respective leadership staff member to assist in the capacity of the Speaker or Minority Leader as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the select committee and subject to the same security clearance and confidentiality requirements as employees of the select committee under this clause.

(4)(A) Except as permitted by subdivision (B), a Member, Delegate, or Resident Commissioner, other than the Speaker or the Minority Leader, may not serve as a member of the select committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(B) In the case of a Member, Delegate, or Resident Commissioner appointed to serve as the chair or the ranking minority member of the select committee, tenure on the select committee shall not be limited.

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of National Intelligence, and the National Intel-

ligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D)(i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chair of the select committee.

(3) Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.

(4) Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

(2) The select committee shall obtain annual reports from the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department concerned and the intelligence and intelligence-related activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the dis-

cretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of persons engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources of information on which the reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

(d)(1) Except as specified in subparagraph (2), clauses 8(a), (b), and (c) and 9(a), (b), and (c) of this rule, and clauses 1, 2, and 4 of rule XI shall apply to the select committee to the extent not inconsistent with this clause.

(2) Notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, in the presence of the number of members required under the rules of the select committee for the purpose of taking testimony or receiving evidence, the select committee may vote to close a hearing whenever a majority of those present determines that the testimony or evidence would endanger the national security.

(e) An employee of the select committee, or a person engaged by contract or otherwise to perform services for or at the request of the select committee, may not be given access to any classified information by the select committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the Rules of the House, including the jurisdiction of the Committee on Ethics and of the select committee concerning the security of classified information during and after the period of the employment or contractual agreement of such employee or person with the select committee; and

(2) received an appropriate security clearance, as determined by the select committee in consultation with the Director of National Intelligence, that is commensurate with the sensitivity of the classified information to which such employee or person will be given access by the select committee.

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the possession of the select committee that unduly infringes on the privacy or that violates the constitutional rights of such person. Nothing herein shall be construed to prevent the select committee from pub-

licly disclosing classified information in a case in which it determines that national interest in the disclosure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1) The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A) the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B) a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

(2)(A) In a case in which the select committee votes to disclose publicly any information that has been classified under established security procedures, that has been submitted to it by the executive branch, and that the executive branch requests be kept secret, the select committee shall notify the President of such vote.

(B) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of the vote to disclose is transmitted to the President unless, before the expiration of the five-day period, the President, personally in writing, notifies the select committee that the President objects to the disclosure of such information, provides reasons therefor, and certifies that the threat to the national interest of the United States posed by the disclosure is of such gravity that it outweighs any public interest in the disclosure.

(C) If the President, personally in writing, notifies the select committee of objections to the disclosure of information as provided in subdivision (B), the select committee may, by majority vote, refer the question of the disclosure of such information, with a recommendation thereon, to the House. The select committee may not publicly disclose such information without leave of the House.

(D) Whenever the select committee votes to refer the question of disclosure of any information to the House under subdivision (C), the chair shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(E) If the chair of the select committee does not offer in the House a motion to consider in closed session a matter reported under subdivision (D) within four calendar days on which the House is in session after the recommendation described in subdivision

(C) is reported, then such a motion shall be privileged when offered by a Member, Delegate, or Resident Commissioner. In either case such a motion shall be decided without debate or intervening motion except one that the House adjourn.

(F) Upon adoption by the House of a motion to resolve into closed session as described in subdivision (E), the Speaker may declare a recess subject to the call of the Chair. At the expiration of the recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the select committee?"

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chair and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Ethics shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House

concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Ethics shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Ethics determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Director of National Intelligence and the Office of the Director of National Intelligence.

(2) The activities of the Central Intelligence Agency.

(3) The activities of the Defense Intelligence Agency.

(4) The activities of the National Security Agency.

(5) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(6) The intelligence and intelligence-related activities of the Department of State.

(7) The intelligence and intelligence-related activities of the Federal Bureau of Investigation.

(8) The intelligence and intelligence-related activities of all other departments and agencies of the executive branch.

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the

defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

RULE XI

PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

In general

1. (a)(1)(A) The Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.

(2)(A) In a committee or subcommittee—

(i) a motion to recess from day to day, or to recess subject to the call of the Chair (within 24 hours), shall be privileged; and

(ii) a motion to dispense with the first reading (in full) of a bill or resolution shall be privileged if printed copies are available.

(B) A motion accorded privilege under this subparagraph shall be decided without debate.

(b)(1) Each committee may conduct at any time such investigations and

studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly, provided that each of the committees complies independently with all requirements for approval and filing of the report.

(4) After an adjournment sine die of the last regular session of a Congress, an investigative or oversight report may be filed with the Clerk at any time, provided that a member who gives timely notice of intention to file supplemental, minority, additional, or dissenting views shall be entitled to not less than seven calendar days in which to submit such views for inclusion in the report.

(c) Each committee may have printed and bound such testimony and other data as may be presented at hearings held by the committee or its subcommittees. All costs of stenographic services and transcripts in connection with a meeting or hearing of a committee shall be paid from the applicable accounts of the House described in clause 1(k)(1) of rule X.

(d)(1) Not later than January 2 of each odd-numbered year, a committee shall submit to the House a report on the activities of that committee.

(2) Such report shall include—

(A) separate sections summarizing the legislative and oversight activities of that committee under this rule and rule X during the Congress;

(B) a summary of the oversight plans submitted by the committee under clause 2(d) of rule X;

(C) a summary of the actions taken and recommendations made with respect to the oversight plans specified in subdivision (B);

(D) a summary of any additional oversight activities undertaken by that committee and any recommendations made or actions taken thereon; and

(E) a delineation of any hearings held pursuant to clauses 2(n), (o), or (p) of this rule.

(3) After an adjournment sine die of the last regular session of a Congress, or after December 15 of an even-numbered year, whichever occurs first, the chair of a committee may file the report described in subparagraph (1) with the Clerk at any time and without approval of the committee, provided that—

(A) a copy of the report has been available to each member of the com-

mittee for at least seven calendar days; and

(B) the report includes any supplemental, minority, additional, or dissenting views submitted by a member of the committee.

Adoption of written rules

2. (a)(1) Each standing committee shall adopt written rules governing its procedure. Such rules—

(A) shall be adopted in a meeting that is open to the public unless the committee, in open session and with a quorum present, determines by record vote that all or part of the meeting on that day shall be closed to the public;

(B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House;

(C) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable; and

(D) shall include provisions to govern the implementation of clause 4 as provided in paragraph (f) of such clause.

(2) Each committee shall make its rules publicly available in electronic form and submit such rules for publication in the Congressional Record not later than 30 days after the chair of the committee is elected in each odd-numbered year.

(3) A committee may adopt a rule providing that the chair be directed to offer a motion under clause 1 of rule XXII whenever the chair considers it appropriate.

Regular meeting days

(b) Each standing committee shall establish regular meeting days for the conduct of its business, which shall be not less frequent than monthly. Each such committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee if notice is given pursuant to paragraph (g)(3).

Additional and special meetings

(c)(1) The chair of each standing committee may call and convene, as the chair considers necessary, additional and special meetings of the committee for the consideration of a bill or resolution pending before the committee or for the conduct of other committee business, subject to such rules as the committee may adopt. The committee shall meet for such purpose under that call of the chair.

(2) Three or more members of a standing committee may file in the offices of the committee a written request that the chair call a special meeting of the committee. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chair of the filing of the request. If the chair does not call the requested special

meeting within three calendar days after the filing of the request (to be held within seven calendar days after the filing of the request) a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held. The written notice shall specify the date and hour of the special meeting and the measure or matter to be considered. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Such notice shall also be made publicly available in electronic form and shall be deemed to satisfy paragraph (g)(3)(A)(ii). Only the measure or matter specified in that notice may be considered at that special meeting.

Temporary absence of chair

(d) A member of the majority party on each standing committee or subcommittee thereof shall be designated by the chair of the full committee as the vice chair of the committee or subcommittee, as the case may be, and shall preside during the absence of the chair from any meeting. If the chair and vice chair of a committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking majority member who is present shall preside at that meeting.

Committee records

(e)(1)(A) Each committee shall keep a complete record of all committee action which shall include—

(i) in the case of a meeting or hearing transcript, a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved; and

(ii) a record of the votes on any question on which a record vote is taken.

(B)(i) Except as provided in subdivision (B)(ii) and subject to paragraph (k)(7), the result of each such record vote shall be made available by the committee for inspection by the public at reasonable times in its offices and also made publicly available in electronic form within 48 hours of such record vote. Information so available shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting.

(ii) The result of any record vote taken in executive session in the Committee on Ethics may not be made available for inspection by the public

without an affirmative vote of a majority of the members of the committee.

(2)(A) Except as provided in subdivision (B), all committee records (including hearings, data, charts, and files) shall be kept separate and distinct from the congressional office records of the member serving as its chair. Such records shall be the property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto.

(B) A Member, Delegate, or Resident Commissioner, other than members of the Committee on Ethics, may not have access to the records of that committee respecting the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House without the specific prior permission of that committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule VII. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause 4(b) of rule VII, including a requirement that nonavailability of a record for a period longer than the period otherwise applicable under that rule shall be approved by vote of the committee.

(4) Each committee shall make its publications available in electronic form to the maximum extent feasible.

(5) To the maximum extent practicable, each committee shall—

(A) provide audio and video coverage of each hearing or meeting for the transaction of business in a manner that allows the public to easily listen to and view the proceedings; and

(B) maintain the recordings of such coverage in a manner that is easily accessible to the public.

(6) Not later than 24 hours after the adoption of any amendment to a measure or matter considered by a committee, the chair of such committee shall cause the text of each such amendment to be made publicly available in electronic form.

Prohibition against proxy voting

(f) A vote by a member of a committee or subcommittee with respect to any measure or matter may not be cast by proxy.

Open meetings and hearings

(g)(1) Each meeting for the transaction of business, including the markup of legislation, by a standing committee or subcommittee thereof (other than the Committee on Ethics or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise

sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House. Persons, other than members of the committee and such noncommittee Members, Delegates, Resident Commissioner, congressional staff, or departmental representatives as the committee may authorize, may not be present at a business or markup session that is held in executive session. This subparagraph does not apply to open committee hearings, which are governed by clause 4(a)(1) of rule X or by subparagraph (2).

(2)(A) Each hearing conducted by a committee or subcommittee (other than the Committee on Ethics or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would violate a law or rule of the House.

(B) Notwithstanding the requirements of subdivision (A), in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, a majority of those present may—

(i) agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger national security, would compromise sensitive law enforcement information, or would violate clause 2(k)(5); or

(ii) agree to close the hearing as provided in clause 2(k)(5).

(C) A Member, Delegate, or Resident Commissioner may not be excluded from nonparticipatory attendance at a hearing of a committee or subcommittee (other than the Committee on Ethics or its subcommittees) unless the House by majority vote authorizes a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members, Delegates, and the Resident Commissioner by the same procedures specified in this subparagraph for closing hearings to the public.

(D) The committee or subcommittee may vote by the same procedure described in this subparagraph to close one subsequent day of hearing, except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence, and the subcommittees thereof, may vote by the same procedure to close up to five additional, consecutive days of hearings.

(3)(A) The chair of a committee shall announce the date, place, and subject matter of—

(i) a committee hearing, which may not commence earlier than one week after such notice; or

(ii) a committee meeting, which may not commence earlier than the third day on which members have notice thereof.

(B) A hearing or meeting may begin sooner than specified in subdivision (A) in either of the following circumstances (in which case the chair shall make the announcement specified in subdivision (A) at the earliest possible time):

(i) the chair of the committee, with the concurrence of the ranking minority member, determines that there is good cause; or

(ii) the committee so determines by majority vote in the presence of the number of members required under the rules of the committee for the transaction of business.

(C) An announcement made under this subparagraph shall be published promptly in the Daily Digest and made publicly available in electronic form.

(D) This subparagraph and subparagraph (4) shall not apply to the Committee on Rules.

(4) At least 24 hours prior to the commencement of a meeting for the markup of legislation, or at the time of an announcement under subparagraph (3)(B) made within 24 hours before such meeting, the chair of the committee shall cause the text of such legislation to be made publicly available in electronic form.

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of any Federal grants or contracts, or contracts or payments originating with a foreign government, received during the current calendar year or either of the two previous calendar years by the witness or by an entity represented by the witness and related to the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B) shall include—

(i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and

(ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in elec-

tronic form not later than one day after the witness appears.

(6)(A) Except as provided in subdivision (B), a point of order does not lie with respect to a measure reported by a committee on the ground that hearings on such measure were not conducted in accordance with this clause.

(B) A point of order on the ground described in subdivision (A) may be made by a member of the committee that reported the measure if such point of order was timely made and improperly disposed of in the committee.

(7) This paragraph does not apply to hearings of the Committee on Appropriations under clause 4(a)(1) of rule X.

Quorum requirements

(h)(1) A measure or recommendation may not be reported by a committee unless a majority of the committee is actually present.

(2) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which may not be less than two.

(3) Each committee (other than the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than one for which the presence of a majority of the committee is otherwise required, which may not be less than one-third of the members.

(4)(A) Each committee may adopt a rule authorizing the chair of a committee or subcommittee—

(i) to postpone further proceedings when a record vote is ordered on the question of approving a measure or matter or on adopting an amendment; and

(ii) to resume proceedings on a postponed question at any time after reasonable notice.

(B) A rule adopted pursuant to this subparagraph shall provide that when proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

Limitation on committee sittings

(i) A committee may not sit during a joint session of the House and Senate or during a recess when a joint meeting of the House and Senate is in progress.

Calling and questioning of witnesses

(j)(1) Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chair by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2)(A) Subject to subdivisions (B) and (C), each committee shall apply the

five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

(B) A committee may adopt a rule or motion permitting a specified number of its members to question a witness for longer than five minutes. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

(C) A committee may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified periods. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

Hearing procedures

(k)(1) The chair at a hearing shall announce in an opening statement the subject of the hearing.

(2) A copy of the committee rules and of this clause shall be made available to each witness on request.

(3) Witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chair may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted by a member of the committee that the evidence or testimony at a hearing may tend to defame, degrade, or incriminate any person, or it is asserted by a witness that the evidence or testimony that the witness would give at a hearing may tend to defame, degrade, or incriminate the witness—

(A) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, the committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if the committee, a majority being present, determines that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chair shall receive and

the committee shall dispose of requests to subpoena additional witnesses.

(7) Evidence or testimony taken in executive session, and proceedings conducted in executive session, may be released or used in public sessions only when authorized by the committee, a majority being present.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of the testimony of such witness given at a public session or, if given at an executive session, when authorized by the committee.

Supplemental, minority, additional, or dissenting views

(1) If at the time of approval of a measure or matter by a committee (other than the Committee on Rules) a member of the committee gives notice of intention to file supplemental, minority, additional, or dissenting views for inclusion in the report to the House thereon, all members shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) to file such written and signed views with the clerk of the committee.

Power to sit and act; subpoena power

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chair of the committee, or a member designated by the chair, may administer oaths to witnesses.

(3)(A)(i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chair of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Ethics, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

(n)(1) Each standing committee, or a subcommittee thereof, shall hold at least one hearing during each 120-day period following the establishment of the committee on the topic of waste, fraud, abuse, or mismanagement in Government programs which that committee may authorize.

(2) A hearing described in subparagraph (1) shall include a focus on the most egregious instances of waste, fraud, abuse, or mismanagement as documented by any report the committee has received from a Federal Office of the Inspector General or the Comptroller General of the United States.

(o) Each committee, or a subcommittee thereof, shall hold at least one hearing in any session in which the committee has received disclaimers of agency financial statements from auditors of any Federal agency that the committee may authorize to hear testimony on such disclaimers from representatives of any such agency.

(p) Each standing committee, or a subcommittee thereof, shall hold at least one hearing on issues raised by reports issued by the Comptroller General of the United States indicating that Federal programs or operations that the committee may authorize are at high risk for waste, fraud, and mismanagement, known as the "high-risk list" or the "high-risk series."

Committee on Ethics

3. (a) The Committee on Ethics has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A letter of reproof or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, Delegate, Resident

Commissioner, officer, or employee in the performance of the duties or the discharge of the responsibilities of such individual. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of the duties or the discharge of the responsibilities of such individual that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned, the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIII.

(6)(A) The committee shall offer annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House. Such training shall—

(i) involve the classes of employees for whom the committee determines such training to be appropriate; and

(ii) include such knowledge of the Code of Official Conduct and related House rules as may be determined appropriate by the committee.

(B)(i) A new Member, Delegate, Resident Commissioner, officer, or employee of the House shall receive training under this paragraph not later than 60 days after beginning service to the House.

(ii) Not later than January 31 of each year, each officer and employee of the House shall file a certification with the committee that the officer or employee attended ethics training in the last year as established by this subparagraph.

(b)1(A) Unless approved by an affirmative vote of a majority of its

members, the Committee on Ethics may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B)(i) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chair and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chair and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or either of them has placed on the agenda of the committee the issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only—

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member, Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner;

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that such Member, Delegate, or Resident Commissioner believes the information is submitted in good faith and warrants the review and consideration of the committee; or

(C) upon receipt of a report regarding a referral from the board of the Office of Congressional Ethics.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Ethics, the chair and ranking minority member shall establish jointly an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or standard of conduct that was not in ef-

fect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

(5) A member of the committee may seek disqualification from participating in an investigation of the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chair shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1978, in sections 7342, 7351, and 7353 of title 5, United States Code, and in clause 11(g)(4) of rule X.

(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the chair of the Committee on Ethics shall make public the written report and findings of the board unless the chair and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chair shall—

(i) upon the termination of such additional period, make public the written report and findings; and

(ii) upon the day of such decision or vote, make a public statement that

the matter, relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral, has been extended.

At least one calendar day before the committee makes public any written report and findings of the board, the chair shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

(B)(i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a referral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the matter is extended for an additional period as provided in subdivision (A), the committee is not required to make a public statement that the matter has been extended.

(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board transmits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in which the report is made public, the committee shall make public any findings.

(C)(i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter—

(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and findings described in such subdivision, except that if the rec-

ommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and

(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the matter, and shall make a new statement upon the expiration of each succeeding one-year period during which the committee has not acted on the matter.

(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chair explaining the status of the matter.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Ethics or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Ethics shall be held in open session unless the committee or subcommittee, in open session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Ethics, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the committee, the following oath (or affirmation) shall be executed:

"I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on

Ethics, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules."

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated by the Committee on Ethics and appropriate action shall be taken.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Ethics, the committee may take such action as it, by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Ethics.

Committee agendas

(f) The committee shall adopt rules providing that the chair shall establish the agenda for meetings of the committee, but shall not preclude the ranking minority member from placing any item on the agenda.

Committee staff

(g)(1) The committee shall adopt rules providing that—

(A) the staff be assembled and retained as a professional, nonpartisan staff;

(B) each member of the staff shall be professional and demonstrably qualified for the position for which hired;

(C) the staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner;

(D) no member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election;

(E) no member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to the employment or duties with the committee of such individual without specific prior approval from the chair and ranking minority member; and

(F) no member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the committee, any information, document, or other material that is confidential, derived from executive session, or classified and that is obtained during the course of employment with the committee.

(2) Only subdivisions (C), (E), and (F) of subparagraph (1) shall apply to shared staff.

(3)(A) All staff members shall be appointed by an affirmative vote of a majority of the members of the committee. Such vote shall occur at the

first meeting of the membership of the committee during each Congress and as necessary during the Congress.

(B) Subject to the approval of the Committee on House Administration, the committee may retain counsel not employed by the House of Representatives whenever the committee determines, by an affirmative vote of a majority of the members of the committee, that the retention of outside counsel is necessary and appropriate.

(C) If the committee determines that it is necessary to retain staff members for the purpose of a particular investigation or other proceeding, then such staff shall be retained only for the duration of that particular investigation or proceeding.

(D) Outside counsel may be dismissed before the end of a contract between the committee and such counsel only by an affirmative vote of a majority of the members of the committee.

(4) In addition to any other staff provided for by law, rule, or other authority, with respect to the committee, the chair and ranking minority member each may appoint one individual as a shared staff member from the respective personal staff of the chair or ranking minority member to perform service for the committee. Such shared staff may assist the chair or ranking minority member on any subcommittee on which the chair or ranking minority member serves.

Meetings and hearings

(h) The committee shall adopt rules providing that—

(1) all meetings or hearings of the committee or any subcommittee thereof, other than any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee, shall occur in executive session unless the committee or subcommittee by an affirmative vote of a majority of its members opens the meeting or hearing to the public; and

(2) any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee shall be open to the public unless the committee or subcommittee by an affirmative vote of a majority of its members closes the hearing to the public.

Public disclosure

(i) The committee shall adopt rules providing that, unless otherwise determined by a vote of the committee, only the chair or ranking minority member, after consultation with each other, may make public statements regarding matters before the committee or any subcommittee thereof.

Requirements to constitute a complaint

(j) The committee shall adopt rules regarding complaints to provide that whenever information offered as a complaint is submitted to the committee, the chair and ranking minority member shall have 14 calendar days or five legislative days, whichever is sooner, to determine whether the information

meets the requirements of the rules of the committee for what constitutes a complaint.

Duties of chair and ranking minority member regarding properly filed complaints

(k)(1) The committee shall adopt rules providing that whenever the chair and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, they shall have 45 calendar days or five legislative days, whichever is later, after that determination (unless the committee by an affirmative vote of a majority of its members votes otherwise) to—

(A) recommend to the committee that it dispose of the complaint, or any portion thereof, in any manner that does not require action by the House, which may include dismissal of the complaint or resolution of the complaint by a letter to the Member, officer, or employee of the House against whom the complaint is made;

(B) establish an investigative subcommittee; or

(C) request that the committee extend the applicable 45-calendar day or five-legislative day period by one additional 45-calendar day period when they determine more time is necessary in order to make a recommendation under subdivision (A).

(2) The committee shall adopt rules providing that if the chair and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, and the complaint is not disposed of within the applicable time periods under subparagraph (1), then they shall establish an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if, at any time during those periods, either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

Duties of chair and ranking minority member regarding information not constituting a complaint

(1) The committee shall adopt rules providing that whenever the chair and ranking minority member jointly determine that information submitted to the committee does not meet the requirements of the rules of the committee for what constitutes a complaint, they may—

(1) return the information to the complainant with a statement that it fails to meet the requirements of the rules of the committee for what constitutes a complaint; or

(2) recommend to the committee that it authorize the establishment of an investigative subcommittee.

Investigative and adjudicatory subcommittees

(m) The committee shall adopt rules providing that—

(1)(A) an investigative subcommittee shall be composed of four Members (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee;

(B) an adjudicatory subcommittee shall be composed of the members of the committee who did not serve on the pertinent investigative subcommittee (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee; and

(C) notwithstanding any other provision of this clause, the chair and ranking minority member of the committee may consult with an investigative subcommittee either on their own initiative or on the initiative of the subcommittee, shall have access to information before a subcommittee with which they so consult, and shall not thereby be precluded from serving as full, voting members of any adjudicatory subcommittee;

(2) at the time of appointment, the chair shall designate one member of a subcommittee to serve as chair and the ranking minority member shall designate one member of the subcommittee to serve as the ranking minority member; and

(3) the chair and ranking minority member of the committee may serve as members of an investigative subcommittee, but may not serve as non-voting, ex officio members.

Standard of proof for adoption of statement of alleged violation

(n) The committee shall adopt rules to provide that an investigative subcommittee may adopt a statement of alleged violation only if it determines by an affirmative vote of a majority of the members of the subcommittee that there is substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member, officer, or employee of the House of Representatives, has occurred.

Subcommittee powers

(o)(1) The committee shall adopt rules providing that an investigative subcommittee or an adjudicatory subcommittee may authorize and issue subpoenas only when authorized by an affirmative vote of a majority of the members of the subcommittee.

(2) The committee shall adopt rules providing that an investigative subcommittee may, upon an affirmative

vote of a majority of its members, expand the scope of its investigation when approved by an affirmative vote of a majority of the members of the committee.

(3) The committee shall adopt rules to provide that—

(A) an investigative subcommittee may, upon an affirmative vote of a majority of its members, amend its statement of alleged violation any time before the statement of alleged violation is transmitted to the committee; and

(B) if an investigative subcommittee amends its statement of alleged violation, the respondent shall be notified in writing and shall have 30 calendar days from the date of that notification to file an answer to the amended statement of alleged violation.

Due process rights of respondents

(p) The committee shall adopt rules to provide that—

(1) not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a statement of alleged violation, the subcommittee shall provide the respondent with a copy of the statement of alleged violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness; but if such evidence is withheld, the subcommittee shall inform the respondent that evidence is being withheld and of the count to which such evidence relates;

(2) neither the respondent nor the counsel of the respondent shall, directly or indirectly, contact the subcommittee or any member thereof during the period of time set forth in paragraph (1) except for the sole purpose of settlement discussions where counsel for the respondent and the subcommittee are present;

(3) if, at any time after the issuance of a statement of alleged violation, the committee or any subcommittee thereof determines that it intends to use evidence not provided to a respondent under paragraph (1) to prove the charges contained in the statement of alleged violation (or any amendment thereof), such evidence shall be made immediately available to the respondent, and it may be used in any further proceeding under the rules of the committee;

(4) evidence provided pursuant to paragraph (1) or (3) shall be made available to the respondent and the counsel of the respondent only after each agrees, in writing, that no document, information, or other mate-

rials obtained pursuant to that paragraph shall be made public until—

(A) such time as a statement of alleged violation is made public by the committee if the respondent has waived the adjudicatory hearing; or

(B) the commencement of an adjudicatory hearing if the respondent has not waived an adjudicatory hearing;

but the failure of respondent and the counsel of the respondent to so agree in writing, and their consequent failure to receive the evidence, shall not preclude the issuance of a statement of alleged violation at the end of the period referred to in paragraph (1);

(5) a respondent shall receive written notice whenever—

(A) the chair and ranking minority member determine that information the committee has received constitutes a complaint;

(B) a complaint or allegation is transmitted to an investigative subcommittee;

(C) an investigative subcommittee votes to authorize its first subpoena or to take testimony under oath, whichever occurs first; or

(D) an investigative subcommittee votes to expand the scope of its investigation;

(6) whenever an investigative subcommittee adopts a statement of alleged violation and a respondent enters into an agreement with that subcommittee to settle a complaint on which that statement is based, that agreement, unless the respondent requests otherwise, shall be in writing and signed by the respondent and respondent's counsel, the chair and ranking minority member of the subcommittee, and the outside counsel, if any;

(7) statements or information derived solely from a respondent or the counsel of a respondent during any settlement discussions between the committee or a subcommittee thereof and the respondent shall not be included in any report of the subcommittee or the committee or otherwise publicly disclosed without the consent of the respondent; and

(8) whenever a motion to establish an investigative subcommittee does not prevail, the committee shall promptly send a letter to the respondent informing the respondent of such vote.

Committee reporting requirements

(q) The committee shall adopt rules to provide that—

(1) whenever an investigative subcommittee does not adopt a statement of alleged violation and transmits a report to that effect to the committee, the committee may by an affirmative vote of a majority of its members transmit such report to the House of Representatives;

(2) whenever an investigative subcommittee adopts a statement of al-

leged violation, the respondent admits to the violations set forth in such statement, the respondent waives the right to an adjudicatory hearing, and the respondent's waiver is approved by the committee—

(A) the subcommittee shall prepare a report for transmittal to the committee, a final draft of which shall be provided to the respondent not less than 15 calendar days before the subcommittee votes on whether to adopt the report;

(B) the respondent may submit views in writing regarding the final draft to the subcommittee within seven calendar days of receipt of that draft;

(C) the subcommittee shall transmit a report to the committee regarding the statement of alleged violation together with any views submitted by the respondent pursuant to subdivision (B), and the committee shall make the report together with the respondent's views available to the public before the commencement of any sanction hearing; and

(D) the committee shall by an affirmative vote of a majority of its members issue a report and transmit such report to the House of Representatives, together with the respondent's views previously submitted pursuant to subdivision (B) and any additional views respondent may submit for attachment to the final report; and

(3) members of the committee shall have not less than 72 hours to review any report transmitted to the committee by an investigative subcommittee before both the commencement of a sanction hearing and the committee vote on whether to adopt the report.

(r) Upon receipt of any written notification from the board of the Office of Congressional Ethics that the board is undertaking a review of any alleged conduct of any Member, officer, or employee of the House and if the committee is investigating such matter, the committee may at any time so notify the board and request that the board cease its review and refer the matter to the committee for its consideration. If at the end of the applicable time period (including any permissible extension) the committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities, the committee shall so notify the board of the Office of Congressional Ethics in writing. The committee may not request the same matter from the board more than one time.

(s) The committee may not take any action that would deny any person any right or protection provided under the Constitution of the United States.

Audio and visual coverage of committee proceedings

4. (a) The purpose of this clause is to provide a means, in conformity with

RULES OF THE COMMITTEE ON ENERGY AND COMMERCE
114TH CONGRESS

(Adopted January 14, 2015)

RULE 1. GENERAL PROVISIONS

(a) Rules of the Committee. The Rules of the House are the rules of the Committee on Energy and Commerce (the “Committee”) and its subcommittees so far as is applicable.

(b) Rules of the Subcommittees. Each subcommittee of the Committee is part of the Committee and is subject to the authority and direction of the Committee and to its rules so far as is applicable. Written rules adopted by the Committee, not inconsistent with the Rules of the House, shall be binding on each subcommittee of the Committee.

RULE 2. MEETINGS

(a) Regular Meeting Days. The Committee shall meet on the fourth Tuesday of each month at 10 a.m., for the consideration of bills, resolutions, and other business, if the House is in session on that day. If the House is not in session on that day and the Committee has not met during such month, the Committee shall meet at the earliest practicable opportunity when the House is again in session. The chairman of the Committee may, at his discretion, cancel, delay, or defer any meeting required under this section, after consultation with the ranking minority member.

(b) Additional Meetings. The chairman may call and convene, as he considers necessary, additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business. The Committee shall meet for such purposes pursuant to that call of the chairman.

(c) Notice. The date, time, place, and subject matter of any meeting of the Committee scheduled on a Tuesday, Wednesday, or Thursday when the House will be in session shall be announced at least 36 hours (exclusive of Saturdays, Sundays, and legal holidays except when the House is in session on such days) in advance of the commencement of such meeting. The date, time, place, and subject matter of other meetings when the House is in session shall be announced to allow

Members to have at least three days notice (exclusive of Saturdays, Sundays, and legal holidays except when the House is in session on such days) of such meeting. The date, time, place, and subject matter of all other meetings shall be announced at least 72 hours in advance of the commencement of such meeting.

(d) Agenda. The agenda for each Committee meeting, setting out all items of business to be considered, shall be provided to each member of the Committee at least 36 hours in advance of such meeting.

(e) Availability of Texts. No bill, recommendation, or other matter shall be considered by the Committee unless the text of the matter, together with an explanation, has been available to members of the Committee for three days (or 24 hours in the case of a substitute for introduced legislation). Such explanation shall include a summary of the major provisions of the legislation, an explanation of the relationship of the matter to present law, and a summary of the need for the legislation.

(f) Waiver. The requirements of subsections (c), (d), and (e) may be waived by a majority of those present and voting (a majority being present) of the Committee or by the chairman with the concurrence of the ranking member, as the case may be.

RULE 3. HEARINGS

(a) Notice. The date, time, place, and subject matter of any hearing of the Committee shall be announced at least one week in advance of the commencement of such hearing, unless a determination is made in accordance with clause 2(g)(3) of Rule XI of the Rules of the House that there is good cause to begin the hearing sooner.

(b) Memorandum. Each member of the Committee shall be provided, except in the case of unusual circumstances, with a memorandum at least 48 hours before each hearing explaining (1) the purpose of the hearing and (2) the names of any witnesses.

(c) Witnesses. (1) Each witness who is to appear before the Committee shall file with the clerk of the Committee, at least two working days in advance of his or her appearance, sufficient copies, as determined by the chairman of the Committee of a written statement of his or her proposed testimony to provide to members and staff of the Committee, the news media, and the general public. Each witness shall, to the greatest extent practicable, also provide a copy of such written testimony in an

electronic format prescribed by the chairman. Each witness shall limit his or her oral presentation to a brief summary of the argument. The chairman of the Committee or the presiding member may waive the requirements of this paragraph or any part thereof.

(2) To the greatest extent practicable, the written testimony of each witness appearing in a nongovernmental capacity shall include a curriculum vitae and a disclosure of any federal grant or contract or foreign government contracts and payments related to the subject matter of the hearing received during the current calendar year or either of the two preceding calendar years by the witness or by an entity represented by the witness. The disclosure shall include (i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and (ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(d) Questioning. (1) The right to interrogate the witnesses before the Committee shall alternate between majority and minority members. Each member shall be limited to 5 minutes in the interrogation of witnesses until such time as each member who so desires has had an opportunity to question witnesses. No member shall be recognized for a second period of 5 minutes to interrogate a witness until each member of the Committee present has been recognized once for that purpose. The chairman shall recognize in order of appearance members who were not present when the meeting was called to order after all members who were present when the meeting was called to order have been recognized in the order of seniority on the Committee.

(2) The chairman, with the concurrence of the ranking minority member, or the Committee by motion, may permit an equal number of majority and minority members to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side. The chairman with the concurrence of the ranking minority member, or the Committee by motion, may also permit committee staff of the majority and minority to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side.

(3) Each member may submit to the chairman of the Committee additional questions for the record, to be answered by the witnesses who have appeared. Each member shall provide a copy of the questions in an electronic format to the clerk of the Committee no later than ten business days following a hearing. The chairman

shall transmit all questions received from members of the Committee to the appropriate witness and include the transmittal letter and the responses from the witnesses in the hearing record. After consultation with the ranking minority member, the chairman is authorized to close the hearing record no earlier than 120 days from the date the questions were transmitted to the appropriate witness.

RULE 4. VICE CHAIRMEN; PRESIDING MEMBER

The chairman shall designate a member of the majority party to serve as vice chairman of the Committee, and shall designate a majority member of each subcommittee to serve as vice chairman of each subcommittee. The vice chairman of the Committee or subcommittee, as the case may be, shall preside at any meeting or hearing during the temporary absence of the chairman. If the chairman and vice chairman of the Committee or subcommittee are not present at any meeting or hearing, the ranking member of the majority party who is present shall preside at the meeting or hearing.

RULE 5. OPEN PROCEEDINGS

Except as provided by the Rules of the House, each meeting and hearing of the Committee for the transaction of business, including the markup of legislation, and each hearing, shall be open to the public, including to radio, television, and still photography coverage, consistent with the provisions of Rule XI of the Rules of the House.

RULE 6. QUORUM

Testimony may be taken and evidence received at any hearing at which there are present not fewer than two members of the Committee in question. A majority of the members of the Committee shall constitute a quorum for those actions for which the House Rules require a majority quorum. For the purposes of taking any other action, one-third of the members of the Committee shall constitute a quorum.

RULE 7. OFFICIAL COMMITTEE RECORDS

(a)(1) Journal. The proceedings of the Committee shall be recorded in a journal which shall, among other things, show those present at each meeting, and include a record of the vote on any question on which a record vote is demanded and a description of the amendment, motion, order, or other proposition voted. A copy of the journal shall be furnished to the ranking minority member.

(2) Record Votes. A record vote may be demanded by one-fifth of the members present or, in the apparent absence of a quorum, by any one member. No demand for a record vote shall be made or obtained except for the purpose of procuring a record vote or in the apparent absence of a quorum. The result of each record vote in any meeting of the Committee shall be made publicly available in electronic form on the Committee's website and in the Committee office for inspection by the public, as provided in Rule XI, clause 2(e) of the Rules of the House, within 24 hours. Such result shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting. The chairman, with the concurrence of the ranking minority member, may from time to time postpone record votes ordered on amendments to be held at a time certain during the consideration of legislation.

(b) Archived Records. The records of the Committee at the National Archives and Records Administration shall be made available for public use in accordance with Rule VII of the Rules of the House. The chairman shall notify the ranking minority member of any decision, pursuant to clause 3 (b)(3) or clause 4 (b) of the Rule, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination on the written request of any member of the Committee. The chairman shall consult with the ranking minority member on any communication from the Archivist of the United States or the Clerk of the House concerning the disposition of noncurrent records pursuant to clause 3(b) of the Rule.

RULE 8. SUBCOMMITTEES

(a) Establishment. There shall be such standing subcommittees with such jurisdiction and size as determined by the majority party caucus of the Committee. The jurisdiction, number, and size of the subcommittees shall be determined by the majority party caucus prior to the start of the process for establishing subcommittee chairmanships and assignments.

(b) Powers and Duties. Each subcommittee is authorized to meet, hold hearings, receive testimony, mark up legislation, and report to the Committee on all matters referred to it. Subcommittee chairmen shall set hearing and meeting dates only with the approval of the chairman of the Committee with a view toward assuring the availability of meeting rooms and avoiding simultaneous scheduling of

Committee and subcommittee meetings or hearings whenever possible.

(c) Ratio of Subcommittees. The majority caucus of the Committee shall determine an appropriate ratio of majority to minority party members for each subcommittee and the chairman shall negotiate that ratio with the minority party, provided that the ratio of party members on each subcommittee shall be no less favorable to the majority than that of the full Committee, nor shall such ratio provide for a majority of less than two majority members.

(d) Selection of Subcommittee Members. Prior to any organizational meeting held by the Committee, the majority and minority caucuses shall select their respective members of the standing subcommittees.

(e) Ex Officio Members. The chairman and ranking minority member of the Committee shall be ex officio members with voting privileges of each subcommittee of which they are not assigned as members and may be counted for purposes of establishing a quorum in such subcommittees.

RULE 9. OPENING STATEMENTS

(a) Written Statements. All written opening statements at hearings and business meetings conducted by the committee shall be made part of the permanent record.

(b) Length. (1) At full committee hearings, the chairman and ranking minority member shall be limited to 5 minutes each for an opening statement, and may designate another member to give an opening statement of not more than 5 minutes. At subcommittee hearings, the subcommittee chairman and ranking minority member of the subcommittee shall be limited to 5 minutes each for an opening statement. In addition, the full committee chairman and ranking minority member shall each be allocated 5 minutes for an opening statement for themselves or their designees.

(2) At any business meeting of the Committee, statements shall be limited to 5 minutes each for the chairman and ranking minority member (or their respective designee) of the Committee or subcommittee, as applicable, and 3 minutes each for all other members. The chairman may further limit opening statements for Members (including, at the discretion of the Chairman, the chairman and ranking minority member) to one minute.

RULE 10. REFERENCE OF LEGISLATION AND OTHER MATTERS

All legislation and other matters referred to the Committee shall be referred to the subcommittee of appropriate jurisdiction within two weeks of the date of receipt by the Committee unless action is taken by the full Committee within those two weeks, or by majority vote of the members of the Committee, consideration is to be by the full Committee. In the case of legislation or other matter within the jurisdiction of more than one subcommittee, the chairman of the Committee may, in his discretion, refer the matter simultaneously to two or more subcommittees for concurrent consideration, or may designate a subcommittee of primary jurisdiction and also refer the matter to one or more additional subcommittees for consideration in sequence (subject to appropriate time limitations), either on its initial referral or after the matter has been reported by the subcommittee of primary jurisdiction. Such authority shall include the authority to refer such legislation or matter to an ad hoc subcommittee appointed by the chairman, with the approval of the Committee, from the members of the subcommittees having legislative or oversight jurisdiction.

RULE 11. MANAGING LEGISLATION ON THE HOUSE FLOOR

The chairman, in his discretion, shall designate which member shall manage legislation reported by the Committee to the House.

RULE 12. COMMITTEE PROFESSIONAL AND CLERICAL STAFF APPOINTMENTS

(a) Delegation of Staff. Whenever the chairman of the Committee determines that any professional staff member appointed pursuant to the provisions of clause 9 of Rule X of the House of Representatives, who is assigned to such chairman and not to the ranking minority member, by reason of such professional staff member's expertise or qualifications will be of assistance to one or more subcommittees in carrying out their assigned responsibilities, he may delegate such member to such subcommittees for such purpose. A delegation of a member of the professional staff pursuant to this subsection shall be made after consultation with subcommittee chairmen and with the approval of the subcommittee chairman or chairmen involved.

(b) Minority Professional Staff. Professional staff members appointed pursuant to clause 9 of Rule X of the House of Representatives, who are assigned to the ranking minority member of the Committee and not to the chairman of the

Committee, shall be assigned to such Committee business as the minority party members of the Committee consider advisable.

(c) Additional Staff Appointments. In addition to the professional staff appointed pursuant to clause 9 of Rule X of the House of Representatives, the chairman of the Committee shall be entitled to make such appointments to the professional and clerical staff of the Committee as may be provided within the budget approved for such purposes by the Committee. Such appointee shall be assigned to such business of the full Committee as the chairman of the Committee considers advisable.

(d) Sufficient Staff. The chairman shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the Committee.

(e) Fair Treatment of Minority Members in Appointment of Committee Staff. The chairman shall ensure that the minority members of the Committee are treated fairly in appointment of Committee staff.

(f) Contracts for Temporary or Intermittent Services. Any contract for the temporary services or intermittent service of individual consultants or organizations to make studies or advise the Committee or its subcommittees with respect to any matter within their jurisdiction shall be deemed to have been approved by a majority of the members of the Committee if approved by the chairman and ranking minority member of the Committee. Such approval shall not be deemed to have been given if at least one-third of the members of the Committee request in writing that the Committee formally act on such a contract, if the request is made within 10 days after the latest date on which such chairman or chairmen, and such ranking minority member or members, approve such contract.

RULE 13. SUPERVISION, DUTIES OF STAFF

(a) Supervision of Majority Staff. The professional and clerical staff of the Committee not assigned to the minority shall be under the supervision and direction of the chairman who, in consultation with the chairmen of the subcommittees, shall establish and assign the duties and responsibilities of such staff members and delegate such authority as he determines appropriate.

(b) Supervision of Minority Staff. The professional and clerical staff assigned to the minority shall be under the supervision and direction of the minority members of the Committee, who may delegate such authority as they determine appropriate.

RULE 14. COMMITTEE BUDGET

(a) Administration of Committee Budget. The chairman of the Committee, in consultation with the ranking minority member, shall for the 114th Congress attempt to ensure that the Committee receives necessary amounts for professional and clerical staff, travel, investigations, equipment and miscellaneous expenses of the Committee and the subcommittees, which shall be adequate to fully discharge the Committee's responsibilities for legislation and oversight.

(b) Monthly Expenditures Report. Committee members shall be furnished a copy of each monthly report, prepared by the chairman for the Committee on House Administration, which shows expenditures made during the reporting period and cumulative for the year by the Committee and subcommittees, anticipated expenditures for the projected Committee program, and detailed information on travel.

RULE 15. BROADCASTING OF COMMITTEE HEARINGS

Any meeting or hearing that is open to the public may be covered in whole or in part by radio or television or still photography, subject to the requirements of clause 4 of Rule XI of the Rules of the House. The coverage of any hearing or other proceeding of the Committee or any subcommittee thereof by television, radio, or still photography shall be under the direct supervision of the chairman of the Committee, the subcommittee chairman, or other member of the Committee presiding at such hearing or other proceeding and may be terminated by such member in accordance with the Rules of the House.

RULE 16. SUBPOENA POWER

The power to authorize and issue subpoenas is delegated to the Chair of the full Committee, as provided for under clause 2(m)(3)(A)(i) of Rule XI of the Rules of the House of Representatives. The Chair shall notify the ranking minority member prior to issuing any subpoena under such authority. To the extent practicable, the Chair shall consult with the ranking minority member at least 72 hours in advance of a subpoena being issued under such authority. The chairman shall report to the members of the Committee on the issuance of a subpoena as soon as practicable but in no event later than one week after issuance of such subpoena.

RULE 17. TRAVEL OF MEMBERS AND STAFF

(a) Approval of Travel. Consistent with the primary expense resolution and such additional expense resolutions as may have been approved, travel to be reimbursed from funds set aside for the Committee for any member or any staff member shall be paid only upon the prior authorization of the chairman. Travel may be authorized by the chairman for any member and any staff member in connection with the attendance of hearings conducted by the Committee or any subcommittee thereof and meetings, conferences, and investigations which involve activities or subject matter under the general jurisdiction of the Committee. Before such authorization is given there shall be submitted to the chairman in writing the following: (1) the purpose of the travel; (2) the dates during which the travel is to be made and the date or dates of the event for which the travel is being made; (3) the location of the event for which the travel is to be made; and (4) the names of members and staff seeking authorization.

(b) Approval of Travel by Minority Members and Staff. In the case of travel by minority party members and minority party professional staff for the purpose set out in (a), the prior approval, not only of the chairman but also of the ranking minority member, shall be required. Such prior authorization shall be given by the chairman only upon the representation by the ranking minority member in writing setting forth those items enumerated in (1), (2), (3), and (4) of paragraph (a).

RULE 18. WEBSITE

The chairman shall maintain an official Committee website for the purposes of furthering the Committee's legislative and oversight responsibilities, including communicating information about the Committee's activities to Committee members and other members of the House. The ranking minority member may

maintain an official website for the purpose of carrying out official responsibilities, including communicating information about the activities of the minority members of the Committee to Committee members and other members of the House.

RULE 19. CONFERENCES

The chairman of the Committee is directed to offer a motion under clause 1 of Rule XXII of the Rules of the House whenever the chairman considers it appropriate.



HUTCHESON v. UNITED STATES

No. 46

SUPREME COURT OF THE UNITED STATES

369 U.S. 599; 82 S. Ct. 1005; 8 L. Ed. 2d 137; 1962 U.S. LEXIS 2211

November 6, 1961, Argued
May 14, 1962, Decided

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

DISPOSITION: 109 U. S. App. D. C. 200, 285 F.2d 280, affirmed.

SUMMARY:

Defendant was convicted in the United States District Court for the District of Columbia of contempt of Congress in violation of 2 USC 192 by refusing to answer pertinent questions put to him by the Senate Select Committee on Improper Activities in the Labor or Management Field (McClellan Committee). The Court of Appeals for the District of Columbia affirmed. (109 App DC 200, 285 F2d 280.)

On certiorari, the Supreme Court affirmed, but could not agree on an opinion.

Harlan, J., joined by Clark and Stewart, JJ., expressed the views that (1) the issue whether the committee's questioning the defendant on matters germane to state criminal proceedings deprived him of due process of law, by prejudicing his defense to the state prosecution or by "pretrial" of the state charges, could be considered only upon review of the state conviction, and (2) the committee did not invade the reserved powers of the executive and judiciary by asking questions aimed at exposing the defendant, without serving any legislative purpose.

Brennan, J., concurring in the result but not in the opinion of Harlan, J., stated that proceeding with the congressional inquiry while state criminal charges were pending was not unfair, and that the defendant was not questioned for exposure's sake.

Warren, Ch. J., joined by Douglas, J., dissented on the ground that the defendant was denied due process of law by being required to choose between (1) claiming his privilege against self-incrimination, which fact could then be used against him in the state prosecution, (2) answering the questions truthfully, and thus aiding the state prosecutors, (3) committing perjury, and risking prosecution therefor, and (4) refusing to answer the committee's questions, and facing prosecution for contempt.

Douglas, J., in a separate opinion, said that it was violative of due process to require a witness either to answer questions or claim his privilege against self-incrimination, and also permit state courts to receive in evidence the fact that the witness had invoked his privilege against self-incrimination.

Black, Frankfurter, and White, JJ., did not participate.

LAWYERS' EDITION HEADNOTES:

CONTEMPT §30

of Congressional committee -- refusal to answer -- purpose of investigation. --

Headnote:[1A][1B]

The conviction under 2 USC 192, which makes it a criminal offense for a witness before a congressional committee to refuse to answer questions pertinent to the question under inquiry, of a union president who refused to answer pertinent questions put to him by the Senate Select Committee on Improper Activities in the Labor or Management Field (McClellan Committee), is not invalid on the ground that the committee's inquiry was simply aimed at the union president's exposure and

engaged when it assigned the fact-finding duty to the Select Committee [*617] on Improper Activities in the Labor or Management Field.

[**LEdHR15] [15]Moreover, this record is barren of evidence indicating that the Committee, for reasons of its own, undertook to "expose" this petitioner.

[**LEdHR16] [16]*First*: The transcript discloses a most scrupulous adherence to the announced Committee policy of not asking a witness under state indictment any questions "on the subject matter involved in the indictment." Note 9, *supra*. This particular indictment related solely to activity in which petitioner and others had been engaged in their individual capacities, not on behalf of any labor organization. The Committee's concern was not whether petitioner had in fact defrauded the State of Indiana of \$ 78,000 in concluding a dishonest sale or whether he had personally [**1015] corrupted a state employee. Its interest, which was entirely within the province entrusted to it by the Senate, was to discover whether and how funds of the Brotherhood of Carpenters or of the Teamsters Union ¹⁷ had been used in a conspiracy to bribe a state prosecutor to drop charges made against individuals who were also officers [**153] of the Brotherhood of Carpenters, and whether the influence of union officials had been exerted to that end. If these suspicions were founded, they would have supported remedial federal legislation for the future, even though they might at the same time have warranted a separate state prosecution for obstruction of justice, or [*618] been usable at the trial of the Marion County indictment as evidence of consciousness of guilt. *Supra*, pp. 607-608. But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, *supra*, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.

¹⁷ The Committee had information tending to show that the Teamsters Union, with whose officers petitioner was friendly, purchased for \$ 40,000 some real estate in Gary, Indiana, worth approximately \$ 3,800. The seller in this transaction was a corporation which then proceeded to purchase Holovachka's interest in another failing corporation for an amount substantially in excess of its value. See Second Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 621, pt. 2, 86th Cong., 1st Sess. 558-560 (1959).

Second: The information sought to be elicited by the Committee was pertinent to the legislative inquiry. The Committee was investigating whether and how union funds had been misused, in the interest of devising a legislative scheme to deal with irregular practices. Because of petitioner's refusal to answer questions, and because of the similar refusal by other witnesses to testify with regard to the Lake County grand jury proceedings, the Committee was not able to learn whether union funds or influence had been used to persuade Holovachka to drop those proceedings.

[**LEdHR17] [17]Petitioner contends that the Committee's finding in its Second Interim Report that Raddock had been "used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson [and others] . . ." shows that his testimony was not needed for any purpose other than to prejudice or embarrass him. But this overlooks the fact that the Committee had been able to obtain no information whatever on the Lake County grand jury proceedings from any of the other witnesses by reason of their refusals to testify on the subject. ¹⁸ Moreover, it does not lie with [*619] this Court to say when a congressional committee should be deemed to have acquired sufficient information for its legislative purposes.

¹⁸ The meagerness of the Committee's finding on this subject stands in marked contrast to its findings on the Hutcheson biography, with respect to which the petitioner and the other witnesses had testified with comparative freedom. Whereas 17 pages of the Second Interim Report are devoted to summarizing the evidence regarding the publication of the biography, only six pages related to the Lake County proceedings. Second Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 621, pt. 2, 86th Cong., 1st Sess. 533-550, 554-560 (1959). It is relevant to observe in this regard that ten of the questions with respect to which the petitioner was subsequently indicted related to the possible use of union funds for the purpose of suppressing the Lake County grand jury proceeding. See note 12, Counts 1, 2, 3, 4, 5, 6, 7, 9, 14, 17.

[**LEdHR18] [18]*Third*: The Committee's interrogation was within the express terms of its authorizing resolution. If the Committee [**1016] was to be at all effective in bringing to Congress' attention certain practices in the labor-management field which should be subject to federal prohibitions, it necessarily had to ask some witnesses questions which, if truthfully answered, might place them in jeopardy of



UNITED STATES v. BRYAN

No. 99

SUPREME COURT OF THE UNITED STATES

339 U.S. 323; 70 S. Ct. 724; 94 L. Ed. 884; 1950 U.S. LEXIS 2528

December 15, 1949, Argued
May 8, 1950, Decided

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Respondent was convicted of a violation of R. S. § 102, for failure to produce records in compliance with a subpoena of the *Committee on Un-American Activities of the House of Representatives*. 72 F.Supp. 58. The Court of Appeals reversed. 84 U. S. App. D. C. 394, 174 F.2d 525. This Court granted certiorari. 338 U.S. 846. Reversed, p. 343.

DISPOSITION: 84 U. S. App. D. C. 394, 174 F.2d 525, reversed.

SUMMARY:

The custodian of the records of an organization, who declined to produce them before a congressional committee when subpoenaed to do so, on the alleged ground that the committee was without constitutional right to require such production, was convicted under a Federal statute making contumacy of a witness summoned by authority of either House to give testimony or produce papers an offense.

Of the seven Justices participating in the decision, three wholly concurred, and the fourth concurred in part, in an opinion delivered by Vinson, Ch. J., to the effect that the Government was not required, in order to make out a case, to prove the presence of a quorum of the committee, that the absence of a quorum was not available as a defense where the objection was not raised before the committee (distinguishing *Christoffel v. United States*, 338 US 84, 93 L ed 1826, 69 S Ct 1447); and that a statute which provides that no testimony given by a witness before a congressional committee shall be used in evidence in any criminal proceeding against him

in any court except in a prosecution for perjury committed in giving such testimony did not preclude the Government from reading to the jury testimony given by defendant before the committee when called upon to produce the records.

Jackson, J., expressed agreement with the result but thought that the *Christoffel* Case was not distinguishable and was in effect overruled by the present decision.

Black, J., with the concurrence of Frankfurter, J., dissented on the ground that the effect of the above-mentioned statute was to render inadmissible defendant's testimony before the committee.

Douglas and Clark, JJ., did not participate.

LAWYERS' EDITION HEADNOTES:

DISCOVERY AND INSPECTION, §15 ;

failure to produce documents before congressional committee -- absence of quorum. -- ;

Headnote:[1]

The presence of a quorum of the congressional committee before whom a witness was subpoenaed to produce documents need not be proven in a prosecution under Revised Statutes, 102, 11 Stat 155, 2 USC 192, for wilful default; nor, where the absence of a quorum was not made the ground of the witness' failure to produce the documents, is it available as a defense. (*Distinguishing Christoffel v. United States*, 338 US 84, 93 L ed 1826, 69 S Ct 1447.)

CONTEMPT, §13 ;

defenses -- inability to comply with court order to produce documents. -- ;

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Headnote:[2]

Inability to comply with a court order to produce documents is ordinarily a defense to a charge of contempt of court in failing to do so, unless the person subpoenaed is responsible for their unavailability or is impeding justice by not explaining what happened to them.

CITIZENSHIP, §2 ;

giving of testimony as public duty. -- ;

Headnote:[3]

The giving of testimony when summoned by competent authority to do so is a public duty to which an exception is allowable only where there is a substantial individual interest which outweighs the public interest in the search for truth.

UNITED STATES, §19 ;

congressional investigation -- right of witness to demand attendance of quorum. -- ;

Headnote:[4]

One subpoenaed to testify or to produce papers before a congressional committee may demand the attendance of a quorum of the committee and decline to testify or to produce the papers so long as a quorum is not present.

CONTEMPT, §12 ;

by witness -- failure to raise objection to right to require testimony. -- ;

Headnote:[5]

The failure of a witness subpoenaed to appear or to produce documents before a congressional committee to object to the absence of a quorum, in order that the committee may consider the objection and remedy it, is itself a contempt of the committee's authority and an obstruction of its processes.

WITNESSES, §84 ;

privilege against self-crimination -- statutory immunity and its effect. -- ;

Headnote:[6]

The provision of Rev Stat 859, 18 USC 3486, that "no testimony given by a witness before . . . any committee of either House . . . shall be used in evidence in any criminal proceeding against him in any court

except in a prosecution for perjury committed in giving such testimony," is not to be construed as precluding admissibility in a prosecution for failure to comply with a subpoena to produce documents before a congressional committee, of testimony given by the witness before the committee when called upon to produce the documents.

COURTS, §92.5 ;

duty to give effect to statute. -- ;

Headnote:[7]

So long as a statute remains in force the courts must give effect to it, although its usefulness has been undermined by judicial decision.

STATUTES, §100.5 ;

construction -- legislative intent -- avoidance of absurdity. -- ;

Headnote:[8]

A statute should not be given a literal construction if such construction is contrary to the legislative intent and leads to absurd conclusions.

SYLLABUS

Respondent was the executive secretary and had custody of the records of an association which was under investigation by the Committee on Un-American Activities of the House of Representatives. The Committee issued and served upon respondent a subpoena directing her to produce before the Committee, at a stated time, specified records of the association. Respondent appeared before the Committee, but refused to produce the records on the ground that the Committee was without constitutional right to demand them. Respondent was indicted, tried and convicted for willful default in violation of R. S. § 102, 2 U. S. C. § 192. *Held:*

1. The presence of a quorum of the Committee at the time of the return to the subpoena was not an essential element of the offense (*Christoffel v. United States*, 338 U.S. 84, distinguished); and, when the Government introduced evidence that respondent had been validly served with a lawful subpoena directing her to produce records within her custody and control and that on the return day she intentionally failed to comply, it made out a *prima facie* case of willful default. Pp. 327-330.

2. The defense of lack of a quorum was not available to respondent under the circumstances of this case. Pp. 330-335.

(a) When a witness seeks to excuse a default on grounds of inability to comply with a subpoena, the defense must fail in the absence of a showing of even a modicum of good faith in responding to the subpoena. P. 332.

(b) Respondent having made no objection to the lack of a quorum on her appearance before the Committee, having relied on other grounds for noncompliance with the subpoena, and having raised the quorum question for the first time on her trial two years later, she cannot rely upon the defense of lack of a quorum on her trial for willful default. Pp. 332-335.

3. The trial court did not err in permitting the Government to read to the jury the testimony that respondent had given before the Committee when called upon to produce the records. Pp. 335-343.

(a) R. S. § 859, now *18 U. S. C. § 3486*, which provides that "No testimony given by a witness before . . . any committee of either House . . . shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony," did not bar the use, at respondent's trial for willful default under R. S. § 102, of the testimony given by her before the Committee. Pp. 337-340.

(b) In R. S. § 859 the term "any criminal proceeding" does not apply to a prosecution for willful default under R. S. § 102. Pp. 338, 342-343.

(c) Congress intended the immunity provided by R. S. § 859 to apply only to *past* criminal acts concerning which a witness may be called to testify. Pp. 339-343.

COUNSEL: Solicitor General Perlman argued the cause for the United States. With him on the brief were Assistant Attorney General Campbell, Robert S. Erdahl, Philip R. Monahan and Felicia H. Dubrovsky.

O. John Rogge and Benedict Wolf argued the cause and filed a brief for respondent.

JUDGES: Vinson, Black, Reed, Frankfurter, Jackson, Burton, Minton; Douglas and Clark took no part in the consideration or decision of this case.

OPINION BY: VINSON

OPINION

[*324] [**727] [***887] MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

Respondent is the executive secretary of an organization known as the Joint Anti-Fascist Refugee Committee (hereinafter referred to as the association)

and as such has custody of its records. Prior to April 4, 1946, the Committee on Un-American Activities of the House of [*325] Representatives, which was conducting an investigation into the activities of the association, had attempted without success to procure these records from respondent and from the chairman of the association's executive board, Dr. Edward K. Barsky. On March 29, 1946, the Committee issued subpoenas to each of the known members of the executive board summoning them to appear in the Committee's room on April 4, 1946, at 10 a. m., to testify and produce certain specified records of the association, and an identical subpoena directed to the association by name was served upon respondent Bryan in her official capacity.

Bryan and the members of the executive board appeared before the Committee at the date and time set out in the subpoenas and in response thereto. Each person so summoned failed to produce any of the records [***888] specified in the subpoenas. The members of the executive board made identical statements in which each declared that he or she did not have possession, custody or control of the records; that Miss Bryan, the executive secretary, did. Respondent admitted that the records were in her possession but refused to comply with the subpoena because "after consulting with counsel [she] came to the conclusion that the subpoena was not valid" because the Committee had no constitutional right to demand the books and records. Asked whether the executive board supported her action, she refused to answer because she did not think the question pertinent.

[**728] The Committee on Un-American Activities then submitted its report and resolution to the House. Setting out at length the Committee's attempts to procure the records of the association, the report concludes:

"The willful and deliberate refusal of Helen R. Bryan and the members of the executive board of the Joint Anti-Fascist Refugee Committee as named herein to [*326] produce the books, papers, and records called for in the subpoenas deprives your committee of evidence necessary in the conduct of its investigation of the Joint Anti-Fascist Refugee Committee, which evidence is pertinent to the said investigation and places the said persons in contempt of the House of Representatives of the United States." ¹

The resolution directing the Speaker to certify the Committee's report to the United States Attorney for the District of Columbia for legal action was approved by the full House after debate. ²

¹ 92 Cong. Rec. 3762, 79th Cong., 2d Sess. (1946).

² *Id.* at 3773.

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[1] Respondent was indicted for violation of R. S. § 102,³ in that she had failed to produce the records called for in the subpoenas and had thereby wilfully made default. At the trial she contended, *inter alia*, that she was not guilty of wilful default because a quorum of the Committee on Un-American Activities had not been present when she appeared on the return day. However, the trial court withdrew that issue from the jury's consideration by instructing the jury "as a matter of law, that the Committee on Un-American Activities of the House of Representatives was a validly constituted committee of the Congress, and was at the time of the defendant's appearance." [*327] Respondent was found guilty, 72 *F.Supp.* 58, but the Court of Appeals for the District of Columbia Circuit, one judge dissenting, reversed the judgment on the ground that the presence of a quorum of the Committee at the hearing on April 4, 1946, was a material question of fact in the alleged offense and should have been submitted to the jury. 84 *U. S. App. D. C.* 394, 174 *F.2d* 525. We granted a writ of certiorari, 338 *U.S.* 846, to consider this important question affecting the procedures of congressional committees.

3 11 Stat. 155, as amended, R. S. § 102, 2 *U. S. C.* § 192:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$ 1,000 nor less than \$ 100 and imprisonment in a common jail for not less than one month nor more than twelve months."

First. R. S. § 102 was enacted in 1857. Its purpose, as stated by its sponsors, was to avoid the procedural difficulties which had been experienced by the House of [***889] Representatives when persons cited for contempt of the House were brought before its bar to show cause why they should not be committed, and, more important, to permit the imprisonment of a contemnor beyond the expiration of the current session of Congress.⁴ Transmission of the fact of the commission of a contempt to the prosecuting authority is made under the Seal of the House or Senate by the Speaker or President of the Senate.⁵ The judicial proceedings are intended as an alternative method of vindicating the authority of Congress to compel the

disclosure of facts which are needed in the fulfillment of the legislative function. *In re Chapman*, 166 *U.S.* 661, 671-672 (1897); *Jurney v. MacCracken*, 294 *U.S.* 125, 151 (1935).

4 See, *e. g.*, remarks of Representative Orr, Cong. Globe, 34th Cong., 3d Sess. 405 (1857).

5 R. S. § 104, 2 *U. S. C.* § 194.

[**729] "Default" is, of course, a failure to comply with the summons. In this case we may assume, without deciding, that the subpoena served on respondent required her to produce the records of the association before the Committee on Un-American Activities, sitting as a committee.⁶ [*328] Upon that assumption, respondent takes the position that, absent a quorum, the Committee was without power to receive the records on the return day; that she cannot be guilty of a default in failing to produce papers before an "agency organizationally defective," which, for that reason, "cannot be obstructed." Respondent does not and cannot, in view of the jury's verdict, contest the finding that she deliberately and intentionally refused to produce the papers called for in the subpoena. Her contention is that a quorum of the Committee was required to meet to witness her refusal. Reliance is placed upon certain precedents of the House of Representatives, which hold that a committee report may be challenged in the House on the ground that a quorum of the committee was not present when the report was approved, and upon this [*329] Court's recent decision in *Christoffel v. United States*, 338 *U.S.* 84 (1949).

6 The subpoena read as follows:

"BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

"To the Sergeant at Arms, or his Special Messenger:

"You are hereby commanded to summon the Joint Anti-Fascist Refugee Committee, 192 Lexington Avenue, New York City, a voluntary organization to be and appear before the Un-American Activities Committee of the House of Representatives of the United States, of which the Hon. John S. Wood is chairman, and to bring with you all books, ledgers, records and papers relating to the receipt and disbursement of money by or on account of the Joint Anti-Fascist Refugee Committee or any subsidiary or sub-committee thereof, together with all correspondence and memoranda of communications by any means whatsoever with persons in foreign countries. The said books,

papers and records demanded herein are for the period from January 1, 1945 up to and including the date of this subpoena, in their chamber in the city of Washington, on April 4, 1946, at the hour of 10:00 A. M. then and there to testify touching matters of inquiry committed to said Committee; and [she] is not to depart without leave of said Committee.

"Herein fail not, and make return of this summons. . . ."

The *Christoffel* case is inapposite. For that decision, which involved a prosecution for perjury before a congressional committee, rests in part upon the proposition that the applicable perjury statute requires that a "competent tribunal" be present when the false statement is made. There is no such requirement in R. S. § 102. It does not contemplate some affirmative act which is made punishable only if performed before a competent tribunal, but an intentional failure to [***890] testify or produce papers, however the contumacy is manifested. Respondent attempts to equate R. S. § 102 with the perjury statute considered in the *Christoffel* case by contending that it applies only to the refusal to testify or produce papers before a committee -- *i. e.*, in the presence of a quorum of the committee. But the statute is not so limited. In the first place, it refers to the wilful failure by any person "to give testimony or to produce papers upon any matter under inquiry before . . . any committee of either House of Congress," not to the failure to testify before a congressional committee. And the fact that appearance before a committee is not an essential element of the offense is further emphasized by additional language in the statute, which, after defining wilful default in the terms set out above, continues, "or who, *having appeared*, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor," (Emphasis supplied.)

It is clear that R. S. § 102 is designed to punish the obstruction of inquiries in which the Houses of Congress or their committees are engaged. If it is shown that such an inquiry is, in fact, obstructed by the intentional withholding of documents, it is unimportant whether the [**730] subpoenaed person proclaims his refusal to respond before [*330] the full committee, sends a telegram to the chairman, or simply stays away from the hearing on the return day. His statements or actions are merely evidence from which a jury might infer an intent to default. A proclaimed refusal to respond, as in this case, makes that intent plain. But it would hardly be less plain if the witness embarked on a voyage to Europe on the day before his scheduled appearance before the committee.

Of course a witness may always change his mind. A default does not mature until the return date of the subpoena, whatever the previous manifestations of intent to default. But when the Government introduced evidence in this case that respondent had been validly served with a lawful subpoena directing her to produce records within her custody and control, and that on the day set out in the subpoena she intentionally failed to comply, it made out a *prima facie* case of wilful default.

Second. It is argued, however, that even if the Government is not required to prove presence of a quorum affirmatively, lack of a quorum is a defense raising material questions of fact which should have been submitted to the jury. The theory is that if the subpoena required production of the records before the Committee on Un-American Activities *qua* committee, respondent could not have complied with the subpoena in the absence of a quorum had she wished to do so, and therefore her default is not wilful, albeit deliberate and intentional. While she did not introduce any direct evidence at the trial, respondent appropriately raised the defense by cross-examination and by her motions, requests and objections.

[2]Ordinarily, one charged with contempt of court for failure to comply with a court order makes a complete defense by proving that he is unable to comply. A court will not imprison a witness for failure to produce documents which he does not have, unless he is responsible [*331] for their unavailability, cf. *Jurney v. MacCracken, supra*, or is impeding justice by not explaining what happened to them, *United States v. Goldstein, 105 F.2d 150 (1939)*.

[3]On the other hand, persons summoned as witnesses by competent authority have certain minimum duties and obligations which are necessary concessions to the public interest in the orderly operation of [***891] legislative and judicial machinery. A subpoena has never been treated as an invitation to a game of hare and hounds, in which the witness must testify only if cornered at the end of the chase. If that were the case, then, indeed, the great power of testimonial compulsion, so necessary to the effective functioning of courts and legislatures, would be a nullity. We have often iterated the importance of this public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned. See, *e. g.*, *Blair v. United States, 250 U.S. 273, 281 (1919)*; *Blackmer v. United States, 284 U.S. 421, 438 (1932)*.

Certain exemptions from attending or, having attended, giving testimony are recognized by all courts. But every such exemption is grounded in a substantial individual interest which has been found, through

centuries of experience, to outweigh the public interest in the search for truth. Dean Wigmore stated the proposition thus: "For more than three centuries it has now been recognized as a fundamental maxim that the public (in the words sanctioned by Lord Hardwicke) has a right to every man's evidence. When we come to examine the various claims of exemption, we start with the primary assumption that there is a general duty to give what testimony one is capable of giving, and that any exemptions which may exist are distinctly exceptional, being so many derogations from a positive general rule."⁷

7 Wigmore, Evidence (3d ed.) § 2192.

[*332] [**731] [4]Every exemption from testifying or producing records thus presupposes a very real interest to be protected. If a privilege based upon that interest is asserted, its validity must be assessed. Since we assume in this case that the subpoenas refer to the production of papers before the Committee *qua* committee, we agree that respondent could rightfully have demanded attendance of a quorum of the Committee and declined to testify or to produce documents so long as a quorum was not present. But the courts need not treat as important that which the witness obviously regarded as unimportant.⁸ Testimonial compulsion is an intensely practical matter. If, therefore, a witness seeks to excuse a default on grounds of inability to comply with the subpoena, we think the defense must fail in the absence of even a modicum of good faith in responding to the subpoena. That such was the situation in this case does not admit of doubt.

8 It is, of course, clear that respondent's "inability" to comply with the subpoena because a quorum of the Committee was not present amounts to no more than the claim that she is excused from doing so. The jury found that she had power to produce the papers. The question therefore arises as to what possible prejudice respondent might have suffered if she had turned over the records to less than a quorum of the Committee. In the case of oral testimony, a witness might well desire to appear only if a quorum was present because of a feeling that some committee members, unrestrained by presence of a majority, might exceed proper bounds of inquiry. But that consideration is obviously inapplicable to the production of papers and is irrelevant here in any event since respondent testified.

In the first place, if respondent had legitimate reasons for failing to produce the records of the association, a decent respect for the House of

Representatives, by whose authority the subpoenas issued, would have required that she state her reasons for noncompliance upon the return of the writ. At the time and place specified in [*333] the subpoenas the Chairman of the Committee and a number of other members -- whether or not a quorum was present at any time is not clear from the record -- presented themselves for the [***892] taking of testimony and receipt of papers. The defect in composition of the Committee, if any, was one which could easily have been remedied. But the Committee was not informed until the trial, two years after the refusal to produce the records, that respondent sought to excuse her noncompliance on the ground that a quorum of the Committee had not been present. For two years, now grown to four, the Committee's investigation was obstructed by an objection which, so far as we are informed, could have been rectified in a few minutes.

[5]Such a patent evasion of the duty of one summoned to produce papers before a congressional committee cannot be condoned. Suppose one who has been summoned to produce papers fails to deliver them as required but refuses to give any reason. May he defend a prosecution for wilful default, many months later, on the ground that he had not been given a sufficient time to gather the papers? We think such a contention hardly tenable. Yet, at the return date, compliance with the subpoena was "impossible" just as in the present case. To deny the Committee the opportunity to consider the objection or remedy it is in itself a contempt of its authority and an obstruction of its processes. See *Bevan v. Krieger*, 289 U.S. 459, 464-465 (1933).

In the second place, the fact that the alleged defect upon which respondent now insists is, in her own estimation, an immaterial one, is clearly shown by her reliance before the Committee upon other grounds for failing to produce the records. She does not deny, and the transcript of the hearing makes it perfectly clear, that she would not have complied with the subpoenas no [*334] matter how the Committee had been constituted at the time. This Court considered a similar question in *Hale v. [**732] Henkel*, 201 U.S. 43 (1906), where a witness had refused in the trial court to produce certain books and papers called for by a subpoena *duces tecum* on three grounds, one of which was that it was impossible to collect the records within the time allowed. The Court pointed out that "Had the witness relied solely upon the first ground, doubtless the court would have given him the necessary time." 201 U.S. at p. 70. But having refused compliance for other reasons which the lower court could not remedy, the witness could not later complain of its refusal to do a meaningless act -- to grant him additional time to gather papers which he had

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indicated he would not produce in any event.⁹ Here respondent would have the Committee go through the empty formality of summoning a quorum of its members to gather in solemn conclave to hear her refuse to honor its demands. Presumably the same formalism would be required if respondent had informed the Committee that she was not coming at all and did not do so.

9 See also, *Blackmer v. United States*, 284 U.S. 421, 443 (1932); *Leber v. United States*, 170 F. 881, 888 (1909); *London Guarantee & Accident Co., Ltd. v. Doyle & Doak*, 134 F. 125 (1905); *State ex rel. Berge v. Superior Court*, 154 Wash. 144, 281 P. 335 (1929).

In a not dissimilar case, Judge Learned Hand stated what we consider to be the basic question before us and gave the answer which we think must necessarily follow. He said:

"The question is no less than whether courts must put up with shifts and subterfuges in the place of truth and are powerless to put an end to trifling. They would prove themselves incapable of dealing with actualities if it were so, for there is no surer [*335] sign of a feeble and fumbling law than timidity in penetrating the form to the substance." *Loubriel v. United States*, 9 F.2d 807, 808 (1926).

We hold that the Government is not required to prove that a quorum [***893] of the Committee was present when the default occurred, and that under the circumstances disclosed by this record a defense of lack of a quorum was not open to respondent.

[6]Third. Respondent also contended at the trial that the court erred in permitting the Government to read to the jury the testimony she had given before the House Committee when called upon to produce the records. She relies upon R. S. § 859, now codified in § 3486 of Title 18 U. S. C., which provides that "No testimony given by a witness before . . . any committee of either House, . . . shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. . . ." Admittedly her testimony relative to production of the books comes within the literal language of the statute; but the trial court thought that to apply the statute to respondent's testimony would subvert the congressional purpose in its passage.¹⁰ We agree.

10 See the court's opinion in *United States v. Barsky*, 72 F.Supp. 165 (1947), affirmed, *Barsky v. United States*, 83 U. S. App. D. C. 127, 138, 167 F.2d 241, 252 (1948).

We need not set out the history of the statute in detail. It should be noted, however, that its function was to provide an immunity in subsequent criminal proceedings to witnesses before congressional committees, in return for which it was thought that witnesses could be compelled to give self-incriminating testimony.¹¹ That purpose was [*336] effectively nullified in 1892 by this [**733] Court's decision in *Counselman v. Hitchcock*, 142 U.S. 547, holding that R. S. § 860,¹² a statute identical in all material respects with R. S. § 859, was not a sufficient substitute for the constitutional privilege of refusing to answer self-incriminating questions. Under that decision, a witness who is offered only the partial protection of a statute such as §§ 859 and 860 -- that his testimony may not be used against him in subsequent criminal proceedings -- rather than complete immunity from prosecution for any act concerning which he testifies¹³ may claim his privilege and remain silent with impunity.

11 R. S. § 859, as originally enacted in 1857, was a part of § 2 of a comprehensive statute, 11 Stat. 155, designed on the one hand to compel the testimony of witnesses and on the other hand to protect them from prosecution for crimes revealed by their testimony. Section 1 of the Act became R. S. § 102, 2 U. S. C. § 192. As first enacted, § 2 not only prevented the use of a witness' testimony in subsequent criminal proceedings but gave him complete immunity from prosecution "for any fact or act touching which he shall be required to testify." This latter provision was deleted in 1862, 12 Stat. 333, leaving only the partial protection of § 859, which was in effect declared insufficient to require a witness to give self-incriminatory testimony in *Counselman v. Hitchcock*, 142 U.S. 547 (1892).

12 R. S. § 860 applied to evidence obtained from a party or witness in any "judicial proceeding" and provided that such evidence should not be used against such person in any criminal proceeding.

13 See *Brown v. Walker*, 161 U.S. 591 (1896).

[7]Section 860 was ultimately repealed. Its usefulness undermined by the *Counselman* decision, it remained on the statute books until 1910, "a shield to the criminal and an obstruction to justice."¹⁴ But [***894] the attention of Congress [*337] has not, apparently, been called to the anomaly presented by the continued existence of R. S. § 859, which, like § 860, was a constituent part of an immunity "bargain" declared invalid in the *Counselman* case.¹⁵ The courts must, therefore, give effect to the

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statute. *Cameron v. United States*, 231 U.S. 710, 720 (1914).

14 H. R. Rep. No. 266, 61st Cong., 2d Sess., which was concurred in by the Senate Committee reporting the repealer, states:

"This section [860] was enacted apparently for the purpose of enabling the Government to compel the disclosure of incriminating testimony on condition that the witness disclosing the same would be given immunity. In the case of *Counselman v. Hitchcock* (142 U.S., 547) it was held that legislation can not abridge a constitutional privilege, and that it can not replace or supply one, at least unless it is so broad as to have the same extent in scope and effect, and that said section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition, and that in view of the constitutional provision (article 5 of the amendments) a statutory enactment to be valid must afford absolute immunity against future prosecution for the offense to which the question relates.

"Since the decision above referred to section 860 has possessed no usefulness whatever, but has remained in the law as an impediment to the course of justice. Under it a witness can not be compelled to give any incriminating testimony whatever, but if he chooses to go on the witness stand and testify as to any matter whatever, even of his own volition, and, whether incriminatory or not, his testimony can not thereafter be brought up against him in any criminal proceedings. He can not be confronted with his own testimony or his own previous statement under oath even on cross-examination. The statute has become a shield to the criminal and an obstruction to justice."

15 In 1938 Congress made minor amendments to the statutes in question without recognizing their inconsistency with the *Counselman* case. 52 Stat. 943. See S. Rep. No. 2108, 75th Cong., 3d Sess.

[8]Since respondent did not refuse to answer the questions put to her by members of the House Committee, her argument is not of denial of any constitutional right but solely that R. S. § 859 bars use of her testimony in her trial for wilful default.¹⁶ The history of that statute, its [**734] original [*338] purpose, and its present status are all relevant considerations in its interpretation. Despite the fact that the literal language

would encompass testimony elicited by the House Committee in its questioning of respondent relative to the production of the records of the association, the Court will not reach that result if it is contrary to the congressional intent and leads to absurd conclusions. *United States v. Kirby*, 7 Wall. 482, 486 (1869); *Glickstein v. United States*, 222 U.S. 139 (1911). And we are clearly of the opinion that the congressional purpose would be frustrated if the words, "in any criminal proceeding," were read to include a prosecution for wilful default under R. S. § 102.

16 *United States v. Monia*, 317 U.S. 424 (1943), is, of course, inapplicable. That decision relates to the necessity of making a claim of immunity under the particular statute there involved. The opinion specifically states that the constitutional privilege, as distinguished from the statutory immunity under consideration in that case, must be claimed. *Id.*, at 427.

That purpose was "more effectually to enforce the Attendance of Witnesses . . . and to compel them to discover Testimony."¹⁷ It had been the experience of Congress prior to 1857 that witnesses could not be compelled to disclose desired information, in part because of insufficient penalties for nondisclosure, and in part because of the constitutional privilege against self-incrimination. In an attempt to surmount the latter obstacle, Congress enacted what became R. S. § 859. By granting an immunity, it was the congressional intent to compel testimony which had hitherto been unavailable.

17 See 11 Stat. 155.

It is now contended that the protection of the statute, which was extended to witnesses in an effort to *obtain* testimony, protects equally the person who wilfully *withholds* testimony and is prosecuted for his wilful default. This contention completely ignores the purpose of the immunity. In the first place, it imputes to Congress the contradictory and irrational purpose of granting [***895] an immunity from prosecution for contempt in order to obtain evidence of that contempt. And in the second place, [*339] it assumes that Congress had some purpose to compel testimony of the kind here involved -- statements of refusal by the witness to answer questions or produce documents -- in return for which it was willing to grant an immunity. Such an assumption cannot be made. These statements have always been available to the Houses of Congress in contempt proceedings. They are uniformly printed in the reports of committees recommending contempt action¹⁸ and are relied upon by the Houses when deliberating in contempt

339 U.S. 323, *, 70 S. Ct. 724, **;
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cases.¹⁹ In short, the purpose of the statute contradicts its application to testimony of this kind.

18 See, e. g., S. Rep. No. 254, 73d Cong., 2d Sess., the Report of a Special Committee on Investigation of Air Mail and Ocean Mail Contracts, setting out in great detail the testimony of William P. MacCracken, Jr., et al., "in order that the Senate may determine whether or not any action shall be taken by the Senate with a view to proceeding against the said William P. MacCracken, Jr. . . . in the nature of a proceeding for contempt or otherwise" See *Jurney v. MacCracken*, 294 U.S. 125 (1935).

19 The incident giving rise to enactment of the statute illustrates the point. A correspondent of the *New York Times*, having made charges of corruption on the part of members of the House of Representatives in connection with pending legislation, was called before a select committee of the House and asked to name the Representatives involved. He declined to do so for the reason that the information had been given to him in confidence. The committee's questions and the witness' answers are set out at length in the Congressional Globe, 34th Cong., 3d Sess., pp. 403-404, as a part of the committee's report and resulted in his being called to the bar of the House "to answer as for a contempt of the authority of this House," and in his subsequent commitment. These proceedings were carried on in conjunction with consideration of the statute in the House. The contention now made would impute to Congress an intent to deprive the courts of the very information upon which the House had acted in the case giving rise to the statute.

[**735] Furthermore, to hold such testimony inadmissible in a prosecution for wilful default is to conclude that Congress, [*340] for no discernable reason, made proof of contempt vastly more difficult before the courts than in its own chambers, since, as we have indicated, the Houses of Congress themselves are accustomed to rely upon such testimony. There is not a hint of any such purpose in the legislative history of the statute or the decisions construing it. On the contrary, this Court has often noted that prosecution under R. S. § 102 was intended "merely to supplement the power of contempt by providing for additional punishment." *Jurney v. MacCracken*, *supra*, at 151.

The debates attending enactment of the statutes here in question and the decisions of this and other federal courts construing substantially identical statutes make plain the fact that Congress intended the immunity

therein provided to apply only to *past* criminal acts concerning which the witness should be called to testify.²⁰ [*341] The offense of [***896] contempt of Congress, with which we are presently concerned, on the other hand, matures only when the witness is called to appear before the committee to answer questions or produce documents and wilfully fails to do so. Until that moment he has committed no crime. There is, in our jurisprudence, no doctrine of "anticipatory contempt." While the witness' testimony may show that he has elected to perjure himself or commit contempt, he does not thereby admit his guilt of some past crime about which he has been summoned for questioning but commits the criminal act then and there.

20 Representative Orr: "The bill provides that no persons called before that committee to testify before them shall be subjected to criminal prosecution for any offense *they may have committed*, and for which their testimony would furnish the basis of an indictment." Cong. Globe, 34th Cong., 3d Sess. 406. Representative Washburn: "The second section of the bill declares that no person summoned as a witness shall be excused from answering a question for the reason that his answer would criminate himself; and provides that he shall be exempt from punishment for any offense *which he may testify that he has committed*, and that on trial for such offense in any court in the country such evidence shall not be used against him." *Id.* at 428. Senator Seward: "The second section of the bill provides that such person shall have the benefit of being exempt from prosecution *as to the matter concerning which he is called to testify.*" *Id.* at 444. (Emphasis supplied throughout.) It may be pointed out that since the statute, as originally enacted, had the effect of granting total immunity from prosecution for any fact or act touching which the witness testified, adoption of respondent's contention would mean that Congress originally intended to immunize the witness who states before the committee that he will not answer questions or produce papers from any prosecution for his default.

In *Glickstein v. United States*, *supra*, this Court considered the problem thereby presented. It was there held that perjury committed in the course of testimony given pursuant to statute falls outside the purview of § 7 (9) of the Bankruptcy Act, 11 U. S. C. § 25 (10), which, like R. S. § 859, provides that no testimony given by the witness (at a creditors' meeting) shall be used against him in any criminal proceedings. In the Court's view, such an immunity "relates to the past and does not endow the person who testifies with a license to commit perjury."

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222 U.S. at 142. The distinction is fully spelled out in a Circuit Court of Appeals opinion, *Edelstein v. United States*, 149 F. 636 (1906), which was cited with approval in the *Glickstein* case:

"To hold that the statute protects a bankrupt from the use of his evidence in a prosecution for perjury while actually testifying would defeat the obvious purposes of the act. It would, in effect, say to the bankrupt: You may forego the exercise of your constitutional privilege, and consent to testify concerning the conduct of your business, and in that way promote the efficient [**736] administration of your estate and benefit your creditors, and by so doing secure [*342] the immunity provided for; but if you give false testimony, calculated to embarrass the administration of your estate and to defeat the just rights of your creditors, and thereby commit a crime specially denounced against you, you shall enjoy the same immunity therefor. Moreover, it would, in effect, secure to the bankrupt the immunity in question for violating his part of the compact, namely, to testify -- that is, to testify truthfully -- by virtue of which he secured a right to the immunity. We are not willing to impute to Congress any such contradictory and absurd purpose. The words 'any criminal proceeding' cannot sensibly or reasonably be construed so literally and generally as to include the criminal proceeding provided by law for false swearing in giving his testimony. They obviously have reference to such criminal proceedings as arise out of past transactions, about which the bankrupt is called to testify." 149 F. at 643-644.

That statement is at least equally applicable to statements made by the witness in refusing to answer questions or produce papers. Such, in fact, was the rationale and decision of the Third Circuit Court of Appeals in just such a case. See *In re Kaplan Bros.*, 213 F. 753 (1914). And see *Cameron v. United States*, *supra*, 719; *McCarthy v. Arndstein*, 266 U.S. 34, 42 (1924).

The same reasons that led this Court to conclude that the clause excepting a prosecution for perjury [***897] from the reach of another immunity statute "was added only from superfluous caution and throws no light on the construction," *Heike v. United States*, 227 U.S. 131, 141 (1913), lead us to hold that Congress did not intend the term, "any criminal proceeding," to encompass a prosecution of the witness for wilful default under R. S. § 102. A contrary view would simply encourage the refusal of [*343] witnesses to answer questions or produce papers, quite contrary to the purpose of the statute.

Respondent advances several contentions which were not passed upon by the Court of Appeals. We do not decide them at this time. The judgment of the Court of Appeals is

Reversed.

MR. JUSTICE FRANKFURTER agrees with this opinion except as to the portion marked *Third*, involving the applicability of § 3486 of Title 18 U. S. C. to the facts of this case, which requires him to dissent from the judgment of reversal.

MR. JUSTICE DOUGLAS and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

CONCUR BY: JACKSON

CONCUR

MR. JUSTICE JACKSON, concurring.

With the result I am in agreement, but I do not see how this decision and that in the *Christoffel* case, 338 U.S. 84, can coexist.

The Court is agreed that this defendant could rightly demand attendance of a quorum of the Committee and decline to testify or to produce documents so long as a quorum was not present. Therefore the real question here is whether, without making any demand, the issue may be raised for the first time long afterwards in a trial for contempt.

This case is the duplicate of *Christoffel* in this respect: in both cases defendants have sought to raise the question of no quorum for the first time in court, when they are on trial for an offense, without having raised it in any manner before the Committee while there was time to remedy it. The Court is now saying, quite properly I think, that this question must be raised at [*344] the time when it can be corrected, and proper records made, and cannot be kept [**737] as an ace up the sleeve to be produced years later at a trial. But in *Christoffel*, the majority took the opposite view and said, "In a criminal case affecting the rights of one not a member, the occasion of trial is an appropriate one for petitioner to raise the question." *Supra*, at 88. If this statement of the law is to be left standing, I do not see how we can say that what was timely for *Christoffel* is too late for *Bryan*. It is plain we are not following the *Christoffel* decision and so I think we should candidly overrule it.

The practice of withholding all objection until time of trial is not helpful in protecting a witness' right to a valid Committee. It prevents correction of any error in that respect and profits only the witness who seeks a concealed defect to exploit. Congressional custom, whether written or not, has established that Committee members may indulge in temporary absences, unless there is objection, without disabling those remaining

from continuing work as a Committee. Members may step out to interview constituents, consult members of their staffs, confer with each other, dictate a letter, or visit a washroom, without putting an end to the Committee -- but always subject to call whenever the point of no quorum is raised; that is notice that someone deems their personal presence important. This is the custom *Christoffel*, in effect, denied to members of Congress. A member now steps out of a committee room at risk of nullifying the whole proceeding.

It is ironic that this interference with legislative procedures was promulgated by exercise within the Court of the very right of absentee [***898] participation denied to Congressmen. Examination of our journal on the day *Christoffel* was handed down shows only eight Justices present and that four Justices dissented in that [*345] case. The prevailing opinion does not expressly indicate the Justices who joined in it, but only four nondissenting Justices were present to do so. On the record this would show only an equally divided Court, which would affirm the judgment below. The only way the four who were present and for a reversal could have prevailed was by counting for it one shown by the record to be absent. There is not even any public record to show that *in absentia* he joined the decision, or approved the final opinion, or considered the matter after the dissent was circulated; nor is there any written rule or law which permitted him to do so.

I want to make it clear that I am not criticizing any Justice or suggesting the slightest irregularity in what was done. I have no doubt that authorization to include the absent Justice was given; and I know that to vote and be counted *in absentia* has been sanctioned by practice and was without objection by anyone. It is the fact that it is strictly regular and customary, according to our unwritten practice, to count as present for purposes of Court action one physically absent that makes the denial of a comparable practice in Congress so anomalous. Of course, there is this difference: The absent Congressman was only necessary to a quorum; the absent Justice was necessary to a decision. No Committee action was dependent upon the Representatives presumed to be absent in the *Christoffel* case. All they could have done if present was to listen. In our own case, personal judgment and affirmative action of the absent member was necessary to make the *Christoffel* opinion a decision of the Court.

The ruling of the Court today seems irreconcilable with the Court's decision in that case. True, the ink on *Christoffel* is hardly dry. But the principle of *stare decisis*, which I think should be the normal principle of [*346] judicial action, is not well served by failing to make explicit an overruling which is implicit in a later decision. Unless we really accede to its authority, it

were far better to undo *Christoffel* before it becomes embedded in the law as a misleading influence with the profession. Of course, it is embarrassing to confess a blunder; it may prove more embarrassing [***738] to adhere to it. In view of the holding today, I think that the decision in the *Christoffel* case should be forthrightly and artlessly overruled.

DISSENT BY: BLACK

DISSENT

MR. JUSTICE BLACK, with whom MR. JUSTICE FRANKFURTER concurs, dissenting.

18 U. S. C. § 3486 provides that no testimony given by a witness before any committee of either house "shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony." The Court admits that use of such testimony in convicting Bryan for wilful failure to produce records violated the "literal language" of § 3486, but declines to give effect to that language. I dissent from the Court's refusal to abide by this congressional mandate.

The statutory exception of "prosecution for perjury" shows that the attention of Congress was focused on whether committee testimony should be admissible in any special type of criminal prosecution. Yet the Court now reads the statute as if Congress had forbidden the use of committee testimony "except in a prosecution for perjury or for failure to produce records." Such extensive judicial law-making is particularly questionable when used to restrict safeguards accorded defendants in criminal cases. Moreover, this statute springs from Congress's recognition of the constitutional privilege against compulsory self-incrimination. [***899] The Court's narrowing of the statute marks a radical departure from the principle underlying previous interpretations of other immunity legislation. [*347] *Smith v. United States*, 337 U.S. 137; *United States v. Monia*, 317 U.S. 424.

The reasons given by the Court for its amendment of the statute have an anomalous basis: the Court feels compelled to alter the clear language of § 3486 in order not to "subvert the congressional purpose" which it admits has already been irrevocably frustrated by the decision in *Counselman v. Hitchcock*, 142 U.S. 547.

Moreover, the statutory language is so clear and precise that dubious legislative history cannot contradict it. And no part of that history even tends to show that Congress meant to permit use of a witness' testimony to convict him of any crime other than perjury. There is a justifiable reason for the perjury exception. The crime consists of the testimony itself, without which no

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prosecution would be possible. Not so with default in producing papers. That crime is based not on a witness's testimony but rather on his failure to produce -- conduct which can be proved by members of a committee, clerks, or spectators. There is therefore no basis for saying that application of the statute as Congress wrote it would lead to "absurd conclusions" by encouraging the "refusal of witnesses to answer questions or produce papers."

As for other essential elements of the crime, such as power to produce, they cannot be proved by evidence extracted from a defendant under compulsion. A witness summoned to testify and produce papers is no less entitled to invoke the protection of this statute and of the *Fifth Amendment's* privilege against self-incrimination than is any other defendant. One who has failed to produce certainly could not be compelled to answer questions concerning his power to produce, thereby making him a "witness against himself." If application of the statute as Congress wrote it would lead to "absurd conclusions," so would the *Fifth Amendment*.

[*348] The Court finds comfort in the statement that the Committee testimony of witnesses is "uniformly printed in the reports of committees recommending contempt action" to the houses of Congress. However extensive this practice may be, it would not justify the use of such evidence in a criminal trial. By its own terms *18 U. S. C. § 3486* is expressly [**739] limited to "any criminal proceeding . . . in any court."¹

1 This distinction between criminal trials and contempt proceedings at the bar of Congress is eminently reasonable in view of the practical differences between the two. See dissenting opinion in *United States v. Fleischman, post*, p. 349. For a discussion of congressional contempt procedures, see Eberling, *Congressional Investigations* 179 and *passim* (Columbia University Press, 1928).

For these reasons the judgment should be reversed and the cause remanded for a new trial.



StemExpress Second Response to Senate Judiciary Committee September 17 Letter

| Request No. | Description |
|-------------|---|
| 1 | Please provide a list of all the entities from which StemExpress has ever acquired fetal tissue, including each entity's address and point of contact. |

StemExpress has obtained fetal tissue from two Planned Parenthood affiliates, Planned Parenthood Mar Monte ("PPMM") and Planned Parenthood Shasta Pacific ("PPSP"). As you know, StemExpress terminated its relationship with PPMM and PPSP in August 2015. The contact information for PPMM and PPSP is listed below.

- **PPMM:** [REDACTED] **POC:** [REDACTED] MD; Medical Director
- **PPSP:** [REDACTED] [REDACTED] MD; VP of Medical Services

StemExpress has also obtained fetal tissue from five independent (non-Planned Parenthood) clinics. StemExpress agrees to identify the states where it has agreements with independent clinics, but will not be providing the names of these clinics to protect their safety and security. To that end, StemExpress has agreements with independent clinics in the following five states:

- Arkansas – one independent clinic
- Arizona – one independent clinic
- California – one independent clinic
- Florida – one independent clinic
- Washington – one independent clinic

| Request No. | Description |
|-------------|---|
| 2 | Please provide copies of all contracts StemExpress has, had, or proposed with suppliers of fetal tissue since the company's creation in 2010, regardless of affiliation with Planned Parenthood, not including the two particular contracts StemExpress has already provided. If StemExpress has acquired fetal tissue from any source without a contract, please list the source entity and the terms of the acquisition. |

See enclosed production of two exemplar agreements between StemExpress and independent clinics, redacted to remove identifying information. The terms of all of StemExpress's agreements with independent clinics are substantially similar to one of these two agreements.



StemExpress Second Response to Senate Judiciary Committee September 17 Letter

| Request No. | Description |
|-------------|--|
| 3 | Please provide copies of all monthly invoices StemExpress received from Planned Parenthood Mar Monte from April 2010 to the present. |

Please see enclosed production.

| Request No. | Description |
|-------------|---|
| 4 | Please provide copies of all monthly invoices StemExpress received from Planned Parenthood Shasta Pacific from May 2012 to the present. |

Please see enclosed production.

| Request No. | Description |
|-------------|---|
| 5 | Please provide all records relating to communications with Planned Parenthood Mar Monte personnel regarding StemExpress' contract with that affiliate, including communications regarding initial requests to enter into a contract, to convince the affiliate that StemExpress would be a better contractual partner than its competitor, discussions of contractual terms, and any other sales pitches or promotional materials provided. |

Please see enclosed production.

Tallmer, Matthew

From: Bell, March
Sent: Tuesday, February 16, 2016 3:46 PM
To: Sidhu, Amandeep
Cc: Tallmer, Matthew
Subject: RE: Subpeona to Stemexpress

This message has been archived. [View the original item](#)

Dear Amandeep:

We will extend until this Friday the 19th. You have had more the ample time to understand the nature and scope of this investigation. I am sure you are familiar with the H. Res 461 and with the relevant Federal Statutes and Regulations. Also, I am sure that you are familiar with the case law of the DC Circuit and understand that any objections to the substance of the subpoena have no basis in law. This investigation has been narrowly tailored to address conduct relevant to federal law.

We will expect your production by COB the 19th.

Thank you,

March Bell

From: Sidhu, Amandeep [REDACTED]
Sent: Tuesday, February 16, 2016 3:32 PM
To: Tallmer, Matthew
Cc: Bell, March; Sawyer, Heather; Bolen, Jacquelyn; Ryan, Stephen
Subject: RE: Subpeona to Stemexpress
Importance: High

Matt/March,

Received on our end, but we need to clarify the February 17 response date in the subpoena. We are still analyzing the subpoena categories, but this appears to be a substantial departure from the Select Panel's initial requests and our prior agreed-upon limitations on scope. We also need to discuss this in detail with our client given the expanded scope. Accordingly, it would be impossible for our client to respond by tomorrow. We respectfully request that the Select Panel revise the response date to Friday, 2/26 to allow for us to note any objections and provide a meaningful response.

Thanks,

Aman

Amandeep S. Sidhu
Partner

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Tallmer, Matthew [REDACTED]
Sent: Tuesday, February 16, 2016 11:55 AM
To: Sidhu, Amandeep
Cc: Bell, March
Subject: Subpeona to Stemexpress

Please find attached the subpoena from the Select Investigative Panel to your client, StemExpress. Do not hesitate to contact me should you have any questions about the subpoena.

Matthew Tallmer

Investigator

Select Investigative Panel

(a/k/a Select Panel on Infant Lives)

[REDACTED]

StemExpress Third Response to House Select Panel Subpoena

| Subpoena Specification No. | Description |
|----------------------------|---|
| 1 | Documents sufficient to show (a) all entities from which StemExpress procured fetal tissue, and (b) all entities to which StemExpress transported, sold, donated, moved, or shipped fetal tissue. Should StemExpress wish to produce a list of such entities referenced in (a) and (b) in lieu of documents, it may do so. |

Consistent with our agreement with the Select Panel Majority staff, StemExpress is identifying the names of all entities responsive to Subpoena Specification No. 1(a). In addition to the two Planned Parenthood affiliates previously identified for the Select Panel, StemExpress has received fetal tissue for use in medical research from the five independent women's clinics listed below:

- Camelback Family Planning
- Cedar Rivers Clinics
- Family Planning Specialists Medical Group
- Presidential Women's Center
- Planned Parenthood Mar Monte
- Planned Parenthood Shasta Pacific
- Women's Health Specialists

StemExpress urges the Select Panel to treat these clinics, in particular the previously undisclosed independent clinics, with the utmost confidentiality protections. As reflected in our prior correspondence with the Select Panel, we remain deeply concerned about the safety and security of institutions and individuals that may be targeted by extremists due to their involvement in the Select Panel's investigation.

Also consistent with our agreement with the Select Panel Majority staff, StemExpress is identifying the names of all entities responsive to Subpoena Specification No. 1(b). StemExpress urges the Select Panel to treat the names of these private companies, universities, and medical centers with the utmost confidentiality protections. As reflected in our prior correspondence with the Select Panel, we remain deeply concerned about the safety and security of institutions and individuals that may be targeted by extremists due to their involvement in the Select Panel's investigation.

1. AllCells
2. Baylor College of Medicine
3. Children's Hospital of Philadelphia
4. City of Hope

StemExpress Third Response to House Select Panel Subpoena

5. Colorado State University
6. Columbia University
7. Dartmouth University
8. Drexel University
9. Ganogen, Inc.
10. George Washington University
11. Harvard University
12. John's Hopkins Medical
13. Massachusetts General Hospital
14. Medical College of Wisconsin
15. Neurona Therapeutics
16. Ohio State University
17. Roche
18. Rockefeller University
19. Stanford University
20. SUNY Upstate Medical University
21. Temple University
22. Thomas Jefferson University
23. UCLA
24. UMASS Medical School
25. University of Illinois at Chicago
26. University of Connecticut Health Center
27. University of Illinois at Chicago
28. University of North Carolina, Chapel Hill
29. University of Pennsylvania
30. Vanderbilt University
31. Vanderbilt University Medical Center
32. Yale University
33. Yale University School of Medicine
34. Zyagen

StemExpress Third Response to House Select Panel Subpoena

| Subpoena Specification No. | Description |
|----------------------------|--|
| 2 | Documents sufficient to show the name and title of all StemExpress current and former personnel whose responsibilities included procuring, researching, storing, packaging for donation, sale, transport, or disposal of fetal tissue, and the identity, of any supervisory personnel under whom such individuals worked. |

As articulated in our February 19, 2016 correspondence in response to this subpoena, StemExpress remains gravely concerned about the safety and security risks associated with identifying individual StemExpress personnel involved in the procurement of fetal tissue. In the alternative, StemExpress is offering one of its employees, [REDACTED] as a corporate witness (consistent with Fed. R. Civ. P. 30(b)(6)). [REDACTED] currently serves as StemExpress' Procurement Director and previously served as a Procurement Manager and Procurement Technician at StemExpress. As StemExpress' second employee, [REDACTED] will be prepared to answer written or oral questions from the Select Panel regarding the fetal tissue procurement process at StemExpress.

Consistent with ongoing discussions with the Select Panel Majority Staff, StemExpress is compiling a list of current and former employees and independent contractors that are/were involved in various aspects of fetal tissue procurement processes to facilitate additional discussions regarding this specification.

| Subpoena Specification No. | Description |
|----------------------------|---|
| 3 | All communications and documents relating to StemExpress employee compensation resulting from or relating to fetal tissue samples procured by current and former StemExpress personnel or other persons or entities that transact business with StemExpress. |

Please see the enclosed production.

StemExpress Third Response to House Select Panel Subpoena

| Subpoena Specification No. | Description |
|----------------------------|--|
| 4 | All communications and documents that identify any federal, state, or local government funds received, directly or indirectly, by StemExpress. |

StemExpress has confirmed that there are no communications or documents responsive to this specification. While StemExpress counts certain federal entities amongst its customers—*e.g.*, U.S. Food and Drug Administration and National Institutes of Health—neither of these entities has purchased fetal tissue or fetal tissue related products. StemExpress has no visibility into the funding sources for its academic and commercial customers.

| Subpoena Specification No. | Description |
|----------------------------|--|
| 5 | All communications referring or relating to abortion or fetal tissue between StemExpress and any federal, state, or local government officials or employees. |

StemExpress has confirmed that there no communications or documents responsive to this specification.

StemExpress Third Response to House Select Panel Subpoena

| Subpoena Specification No. | Description |
|----------------------------|--|
| 6 | All communications and documents regarding any direction to StemExpress current or former personnel with respect to the procurement or disposal of fetal tissue. |

Consistent with ongoing discussions with the Select Panel Majority Staff, StemExpress is preparing an accounting report of 2015 fetal tissue transactions, organized by customer, to satisfy this specification.

| Subpoena Specification No. | Description |
|----------------------------|---|
| 7 | All communications and documents that StemExpress utilizes to obtain patient consent for fetal tissue at any clinic. (See instruction below regarding HIPAA.) |

Please see the enclosed production.

| Subpoena Specification No. | Description |
|----------------------------|--|
| 8 | All communications and documents, including but not limited to accounting memoranda, referring or relating to the cost and pricing of fetal tissue by StemExpress. |

StemExpress previously produced to the Select Panel communications and documents responsive to this specification.

StemExpress Third Response to House Select Panel Subpoena

| Subpoena Specification No. | Description |
|----------------------------|---|
| 9 | All communications and documents, sorted by customer, referring or relating to requests or orders made to StemExpress regarding fetal tissue and the amount paid by each customer to StemExpress. |

Consistent with ongoing discussions with the Select Panel Majority Staff, StemExpress is preparing an accounting report of 2015 fetal tissue transactions, organized by customer, to satisfy this specification.

| Subpoena Specification No. | Description |
|----------------------------|---|
| 10 | All communications and documents referring or relating to the purchase, ownership, or rental by StemExpress of equipment for the storage, disposal, modification, or research of fetal tissue, including equipment price, purchase date, maintenance costs, and records of the depreciation treatment under the tax code of any such equipment. |

StemExpress previously produced to the Select Panel communications and documents responsive to this specification.

| Subpoena Specification No. | Description |
|----------------------------|--|
| 11 | All StemExpress banking and accounting documents, sorted by any source of fetal tissue and any customer of StemExpress, that reflect accounts payable and/or funds received that in any way refer or relate to the procurement, sale, donation, or distribution of shipment of fetal tissue. |

Consistent with ongoing discussions with the Select Panel Majority Staff, StemExpress is preparing an accounting report of 2015 fetal tissue transactions, organized by customer, to satisfy this specification.

StemExpress Third Response to House Select Panel Subpoena

| Subpoena Specification No. | Description |
|----------------------------|---|
| 12 | Documents sufficient to show any known litigation in which StemExpress is named as a party, including any threatened or anticipated litigation. Should StemExpress wish to produce a list of such litigation, including appropriate docket information, in lieu of documents, it may do so. |

StemExpress is a plaintiff in *StemExpress LLC, et al. v. The Center for Medical Progress, et al.*, Case No. BC589145, currently pending before Judge Rafael A. Ongkeko in the Los Angeles Superior Court. Please see the enclosed production for a copy of the docket sheet for this case and a recent order reflecting the current status of the litigation. StemExpress is not a party to any other active, threatened, or anticipated litigation at this time.

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

July 20, 2016

Neil F. Quinter

Brownstein Hyatt Farber Schreck, LLP

Dear Mr. Quinter,

Per our agreement and discussion on July 15, 2016, the Select Investigative Panel will interview several employees of Germantown Reproductive Health Services (GRHS) and make a transcription of the interviews. The transcribed interviews will be reviewable at the offices of the Panel (Ford 316) for accuracy by the representative of GRHS. The Panel promises to keep all names and identifiers of each person associated with GRHS, however obtained, private and confidential. Specifically, no names and/or any identifying information will be released to the public, either in official reports or any other communication. Only Members of Congress and congressional staff will have access to any names or other identifying information.

The scope of the interview questions is as follows:

1. Staff training, qualifications, and responsibilities
2. Standards of care for patients and infants
3. Clinic finances, if the staff person is knowledgeable [the Panel acknowledges that GRHS is maintaining its objection to providing this information, as spelled out in its response to subpoena item 6 and elsewhere, without conceding the validity of this objection]
4. Dr. Carhart's daily caseload, performance, and record

As a matter of process, after a hard copy of the unofficial transcript is delivered to the majority, you may review the unofficial transcript on site at the majority office. We will notify you as soon as the unofficial transcript arrives at the office. On average, it takes a week for a hard copy of a transcript to be delivered.

Regarding the format of the transcribed interviews, each employee will be asked one round of questions for an hour by the majority, followed by an hour of questioning by the minority. A short preamble will be read before each interview as is the custom of the Energy and Commerce Committee.

Sincerely,

t. March Bell

T. March Bell

Staff Director and Chief Counsel

POLITICS

Democrats Compare GOP Probe Of Medical Organizations To McCarthyism

Republicans have subpoenaed the names of doctors, researchers and medical students involved in abortion and fetal tissue research.

03/02/2016 06:50 pm ET

920 f Twitter Pinterest Email Comment

Samantha Lachman
Staff Reporter, The Huffington Post



What People are Searching For



Uneasy celebration



2016 Emmy Awards

WASHINGTON — The special House committee investigating abortion providers got off to a contentious start Wednesday as Democrats on the panel objected to [the GOP's subpoenas](#) of the names of doctors, medical students and researchers involved in performing abortions or conducting fetal tissue research.

The special committee, now called the Select Investigative Panel on Infant Lives, [was convened](#) last year by Republicans following the release of a series of undercover videos by anti-abortion activists showing Planned Parenthood staff discussing the donation of fetal tissue for research.

Marsha Blackburn (R-Tenn.,) said the sting videos "revealed that something very troubling is going on related to fetal tissue and research."

"There is something going on, something that deserves investigating and that demands our best moral and ethical thinking," Blackburn said. She argued



Republicans and the Center for Medical Progress, which made the videos, claim that Planned Parenthood was illegally profiting from the transfer of the tissue, which Planned Parenthood has denied. Multiple [congressional committees](#) and states have investigated the matter and found no evidence of wrongdoing.

The founder of the anti-abortion Center for Medical Progress, David Daleiden, [was indicted](#) by a Texas grand jury in January after the jury cleared Planned Parenthood.

"They are persisting in moving forward as if the maker of the tapes had not been indicted and discredited and as if the investigations of the committees and the states did not happen at all," Rep. Jan Schakowsky (D-Ill.), the committee's top Democrat, told reporters.

The hearing was held at the same time as the Supreme Court [heard oral arguments](#) across the street in a major case that could [shut down abortion clinics statewide](#).

Rep. Jerrold Nadler (D-N.Y.) immediately asked Blackburn, the committee chair, to explain why Republicans had requested the names of doctors, medical students and researchers in subpoenas sent to hospitals, abortion clinics, fetal tissue procurement companies and academic institutions.

"To date, you have refused to explain how this information is pertinent to this investigation," Nadler said, arguing that equivalent information could be obtained from representatives of the institutions receiving subpoenas. "Nor should we proceed with dangerous subpoenas that endanger the lives and physical safety of patients, providers and researchers in a way that could make this committee complicit with any physical assaults or murders of these people."

Blackburn told reporters after the hearing that the majority would "do everything possible to protect names and identities ... we will do redactions as necessary to protect privacy."

But, as Schakowsky, the committee's ranking member pointed out, videos made by the Center for Medical Progress that were supposed to be only viewed by members of Congress [were leaked](#). Democrats noted that the multiple abortion clinics [have been firebombed](#) since the sting videos were released. They also raised the spectre of someone like Robert Lewis Dear — who [admitted](#) to killing three people in November at a [Planned Parenthood clinic in Colorado Springs, Colorado](#) — getting ahold of the names of the researchers and doctors and targeting them.

Democrats argued that the Republicans' subpoenas resembled the "witch hunt" of communists undertaken by former Sen. Joe McCarthy (R-Wis.) in the 1950s.

"There is no reason to create such a database, and the Chair's abuse of her

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Southern Company Today's Kemper milestone serves as a testament to our employees and moves the facility closer toward full operation. <https://t.co/2pzmRcngJP>
3 days ago

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TRENDING

Julia Louis-Dreyfus: 'Veep' Has Turned Into A 'Sobering Documentary'

Tina Fev's Face After

dangerous because we have seen people murdered, not just losing their jobs," she told reporters after the hearing.

Schakowsky said that Democrats would "stand behind anyone who wants to resist providing individual names, personally identifiable information, to this committee." She expressed doubt that Republicans would push the matter too far, since the entire House would have to vote on a motion to find the organizations who received the subpoenas in contempt if they continued to refuse to provide names.

The hearing itself focused on whether it is necessary for researchers to procure fetal tissue from abortions. Republicans and their witnesses suggested such donations are immoral and coerced, while Democrats defended the practice and noted [the various therapies and vaccines](#) that were invented with the help of such research.

Blackburn said the committee's next steps are to invite more scientists to testify — which the Democrats said they'd welcome since scientists tend to be on their side — look at "trends in cellular research" and investigate fetal tissue procurement organizations.



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Strategic alliance with MWE China Law Offices (Shanghai)

Amandeep S. Sidhu
Attorney at Law

March 18, 2016

DELIVERED VIA EMAIL

March Bell
Matthew Tallmer
Select Panel on Infant Lives
House Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20510-6115

Re: Response to March 18 Email Demands

Dear March & Matt:

On behalf of our client, StemExpress LLC, we are writing in response to your email correspondence from earlier today, March 18 (enclosed here for your reference). In your email, you unilaterally reneged on our previous agreement regarding the terms and scope of StemExpress's response to the Select Panel's February 12 subpoena. To be clear, during our March 4 teleconference we expressed concern that—in light of the prior production of four months of documents responsive to Subpoena Specification Nos. 6, 9, and 11—complete response to the subpoena across five years would be abusive, unduly burdensome, and not likely to produce information that is necessary for the Select Panel to fulfill its so-called “mandate” under House Res. 461. As a reasonable alternative to these subpoena requests, we offered to confirm with our client the possibility of generating a “roll-up” accounting report listing StemExpress's transfer of fetal tissue to researchers, organized by customer, and including the amounts paid by each customer. While this report would constitute work product created for the Select Panel (*i.e.*, not maintained in the regular course of business), we understood that the proposed contents of such a report would meet the needs of the Select Panel.

On our call earlier this week, on March 14, we confirmed that our client is able to produce such a report for 2015 and would produce that report on or before March 28. It was our understanding that you agreed to review this 2015 roll-up report and determine whether additional years would be necessary in subsequent productions. We neither discussed the dates for such future productions nor agreed to any specific deadlines. While we have now confirmed that we will be able to produce a similar report for 2014 by March 28, as well, we did not and could not agree to an identical production schedule for similar reports from 2011-2013 at that time for specific reasons described here. As a small start-up company, StemExpress only recently migrated to an accounting system capable of generating the types of reports. While we have confirmed that the

new accounting system can generate reports for 2014 and 2015 fetal tissue sales, our client has not yet determined whether similar reports can be generated for 2011-2013 using the old accounting system. Based on our agreement to limit the initial production to a 2015 report, and now a 2014 report, the effort to determine what information is available for 2011-2013 is ongoing. The other years may take some additional time and are unlikely to be ready on for production by April 1, as you sought in today's email. We will advise you when we believe we can add the three additional reports or take the position we cannot easily do so.

Similarly, your email demands the production of payment invoices for the five independent clinics identified to the Select Panel. While this is likely feasible, we will need to confer with our client to determine whether this information can be produced by April 1 or if we need additional time. We are more likely to be able to accomplish this by April 1 or soon thereafter.

Finally, for the first time today you demand the identification of StemExpress's "bookkeeper or accountant by close of business today." First, your demand for this information within a few hours is not achievable. Counsel do not know and will obtain this information from the relevant personnel that perform this function at StemExpress when they are available on Monday. Second, the basis for your request may be to send a duplicative request to the "bookkeeper or accountant" for the same information you are demanding directly from StemExpress. Therefore, if you intend to issue a separate subpoena to such individual(s) requests that will duplicate the very information you are still seeking from StemExpress, we object. Third, and notwithstanding or first two objections noted above, your email does not constitute an official communication from the Congress to which we are obligated to respond. If you do intend to "require" this information, we could reasonably ask that you do so through a letter from Chairman Blackburn or a new subpoena. Cooperation is something we can only accomplish when treated in a cooperative manner. We will have no answer for you tonight.

Since December 2015, StemExpress has endeavored to be fully cooperative with the Select Panel's requests for information. This cooperation comes on the heels of full cooperation with the prior Congressional investigations. As reflected in our March 14 production, our client has now provided complete responses to nearly all of the subpoena specifications. We were pleased with the mutual cooperation and progress we made on our March 14 teleconference, but your email today is not consistent with that discussion.

If you have any questions about this correspondence, please do not hesitate to contact me at [REDACTED]

Sincerely,



Amandeep S. Sidhu

March Bell & Matthew Tallmer
March 18, 2016
Page 3

Enclosure

cc (w/encl.):

Heather Sawyer, Select Panel Minority Chief Counsel

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 NEAL R. GROSS & CO., INC.

2 RPTS MICHON

3 HIF111040

4

5 THE PRICING OF FETAL TISSUE

6 Wednesday, April 20, 2016

7 House of Representatives

8 Select Investigative Panel

9 Committee on Energy and Commerce

10 Washington, D.C.

11

12

13 The panel met, pursuant to call, at 10:00 a.m., in Room
14 HVC-210 House Visitors Center, Hon. Marsha Blackburn [chairwoman
15 of the panel] presiding.

16 Members present: Representatives Blackburn, Pitts, Black,
17 Bucshon, Duffy, Harris, Hartzler, Love, Schakowsky, Nadler,
18 DeGette, Speier, DelBene, and Watson Colman.

19 Staff present: Mike Bloomquist, Deputy Staff Director; Karen
20 Christian, General Counsel; Jay Gulshen, Staff Assistant; Peter
21 Kielty, Deputy General Counsel; Graham Pittman, Legislative
22 Clerk; Heidi Stirrup, Health Policy Coordinator; Jean Woodrow,
23 Director, Information Technology; March Bell, Minority Staff

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 procurement businesses violated the statute, aided and abetted
2 one another in violating the statute, and likely conspired
3 together to violate the statute.

4 In fact, for five of the six elements of the substantive
5 offense, in my opinion there is proof beyond a reasonable doubt.
6 The only element where investigation is needed, and that would
7 include I believe forensic accounting and analysis thereof, is
8 whether the payments made by the research institutions that
9 ultimately receive the human tissue to the procurement businesses
10 were a valuable consideration or, alternatively, reasonable
11 payments associated with the specific allowable services in the
12 statute.

13 With respect to the abortion clinics, in my opinion, the
14 proof is more clearly established that the compensation they
15 receive from the procurement business, a price per tissue payment,
16 is indeed valuable consideration, as none of the identified
17 services excluded from the definition were provided by the
18 clinics.

19 Now, prosecutors and jurors clearly prefer to define and
20 establish elements of the offense. Five of the six elements of
21 that offense are both clearly defined and established through the
22 exhibits. As for the final element, valuable consideration, that
23 element and those proofs are admittedly more nuanced.

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1 or did say elsewhere.

2 If someone is saying that would be good, and we are talking
3 about profiting from this, and they are talking about that, that
4 is corroborative evidence. It corroborates the evidence that you
5 were identifying, Mr. Congressman, which is very strong evidence
6 when someone is actually marketing for it. So I would --

7 Mrs. Blackburn. Let's answer quickly. Time has expired.

8 Mr. Sukhia. I would also want to know what communications
9 occurred between -- other communications, email and so forth, back
10 and forth between those people. We would seek those items as
11 well, and of course the accounting records.

12 Thank you.

13 Mr. Pitts. I yield back. Thank you.

14 Mrs. Blackburn. The gentleman yields back.

15 Ms. Schakowsky is recognized for five minutes.

16 Ms. Schakowsky. Unfortunately, we have -- the majority has
17 refused to even bring in the one party that actually could answer
18 these questions, and that is StemExpress.

19 And I want to say, Mr. Sukhia and Mr. Norton, as lawyers,
20 the fact that you keep referring back to these completely
21 discredited by 3 Congressional panels, by 12 states that looked
22 into this, by a grand jury that ended up -- you talk about the
23 Center for Medical Progress, Mr. Sukhia, Sukhea, which is it?

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1 as a U.S. Attorney, but also in my experience fighting Planned
2 Parenthood in a very grueling eight-day trial, one of the few in
3 the country, on the defense of Florida's Parental Notice of
4 Abortion Act.

5 And I will tell you that "follow the money" is a concept that
6 applies with special force in that area. And that was -- it was
7 astounding what I learned about how money motivates that industry.
8 And when I look at these figures -- let me give you an example.
9 One of the doctors that testified acknowledged that he had
10 performed over 100,000 abortions, and we -- based on the amount
11 of time that he -- the one way we could do it, because I continued
12 to try to find out how much are they making. And they fought tooth
13 and nail to prevent that information from coming out.

14 So to quickly just answer your question, I would say, yes,
15 it is extremely important to find out where the money --

16 Mrs. Hartzler. What specific documents would you look for?

17 Mr. Sukhia. I would ask for bank records.

18 Mrs. Hartzler. Okay.

19 Mr. Sukhia. I would find out what -- you know, follow the
20 money. I would find out, you know, who is getting paid, where
21 are the checks going.

22 Mrs. Hartzler. Okay. Thank you. Mr. Norton?

23 Mr. Norton. Yes. I would do the same. First of all, I

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1 would start by looking at the videos, which I have seen. I would
2 start by reading the forensic accounting report by Coalfire
3 Investigations made up of former FBI agents, which found that the
4 videos were credible and the redacted versions say what the longer
5 versions say.

6 I would obtain the accounting records, the financial records
7 of the abortion clinic, of the procurement business, and, frankly,
8 I would obtain the records of the end user as well, and subpoena
9 both records and witnesses from all of those entities to flesh
10 out the facts in this case, which I think are there.

11 Mrs. Hartzler. Thank you very much. In the last minute,
12 I want to turn to Ms. Foster and ask you a question. As you have
13 justified, post-abortive woman, please explain a little bit more
14 about what you think regarding possible HIPAA violations that Mr.
15 Norton raised, where the procurement tech has the ability, after
16 receiving the order through email in the morning, to review the
17 medical records of the patients without their knowledge, explain
18 what you think. Has HIPAA been violated? And, if so, what should
19 the penalty be?

20 Ms. Foster. I am very concerned that HIPAA may have been
21 violated. Obviously, Planned Parenthood has gone to court time
22 and time again to keep secret and confidential the records of women
23 who have abortions, and yet these very same abortion clinics are

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 documents, the Exhibits D, we looked at some of those on the
2 pricings of items, brains, things of this nature. If you are
3 looking at a customer paying, say, \$2,000 for a brain, and over
4 the course of the year that customer is paying \$42,000 for the
5 body parts, it is hard to imagine how the procurement business
6 is operating at a loss.

7 And what we are seeking to do is to figure out if there is
8 a violation of law, and if someone is selling these fetal tissue
9 parts for a profit. And that is what we are digging down on is
10 we are looking at the pricing of fetal tissue represented in those
11 D series documents, and then it is why we have constructed the
12 chart, the G chart, that shows where there seems to be movement
13 of the money.

14 So you all have heard this debate. You have heard it from
15 both sides. You have heard the questions coming from both sides.
16 And I am going to start, Ms. Clayton, with you, and work my way
17 down to Mr. Sukhia.

18 Very quickly, what I would like to hear from you, what
19 documents would you request or subpoena from these procurement
20 organizations in order to find out -- we have asked for banking
21 records from the procurement business that has been the point of
22 discussion today and they have refused to give us those. We
23 thought that would help clear the way, if you will, to figure out

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 what the profiting is.

2 So let's start there. Very quickly, we have only got 2
3 minutes and 45 seconds left.

4 Ms. Clayton. I would start with the -- with accepting the
5 invitation from the procurement business. I understand its name
6 is StemExpress. And I would have them come in, put them under
7 oath, as I understand they have offered to do, and ask them, how
8 did you come up with this charge? Why is it so much more expensive
9 to --

10 Mrs. Blackburn. That would be an incorrect assumption, but,
11 yes, we would like to have --

12 Ms. Clayton. The second thing I would do is ask them, in
13 each particular case, what aspect of the actual costs does a
14 particular clinic incur? For example, does the clinic provide
15 space? Does the clinic, as we have seen in your charts, provide
16 the blood draws which requires a technician, perhaps a nurse,
17 materials? Does the clinic have to do paperwork? And, if so,
18 how much? And, therefore, how much of the actual reasonable cost
19 is incurred by the clinic itself as opposed to by the procurement
20 business?

21 Mrs. Blackburn. Okay.

22 Ms. Clayton. That is where I would start.

23 Mrs. Blackburn. Okay.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 Mr. Raben. Similar. Sterilization of equipment, what is
2 the cost capital of the equipment, the processing, the
3 preservation, are there transportation costs. I wouldn't look
4 at banking records. I would want to -- it is an HR function as
5 well, staff time for the consent forms that are put together.

6 Mrs. Blackburn. All right. Mr. Lennon?

7 Mr. Lennon. As I said in my opening, you need a forensic
8 -- if I was a prosecutor, you have to have a forensic evaluation
9 accounting of the procurement business, because that is not clear
10 from the records here. So following the money, you have got to
11 have the entire picture.

12 Mrs. Blackburn. Okay. Mr. Norton?

13 Mr. Norton. The first thing I wouldn't do is ask the
14 StemExpress or others, are you innocent or guilty? Every
15 defendant I have ever prosecuted or even represented has claimed
16 innocence. That is just not the case. There is some culpability
17 here.

18 I would do the same thing. I would get forensic accounting.
19 I would get all of the financial records. I would get the profit
20 and loss statements, the income and expense statements, and I
21 would get people under oath before a grand jury. Letters are not
22 particularly valuable.

23 Mrs. Blackburn. Ms. Foster?

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 Ms. Foster. There are two things that I would specifically
2 seek among many different documents. First of all, financial
3 records. That is something that must be brought to light. And,
4 second, women of every generation are unique human beings who can
5 speak for themselves, but the baby body parts profiteers have
6 created a market in which their profits rise if they pressure and
7 coerce women into signing donation consent forms.

8 So I would want to find out exactly what their procedures
9 are, what documents, what training they have on how to speak to
10 women and how they get those consent forms signed.

11 Mrs. Blackburn. Mr. Sukhia?

12 Mr. Sukhia. I would just echo the comments of the other
13 members on the panel. I would note that in the case that I
14 handled, many of the minors were under -- there were reports from
15 people who owned and ran clinics that many minors would be under
16 the age of 14 who often would cry out for their mothers, and so
17 forth. They are in no position to give meaningful consent, such
18 as those suggested by the exhibits that were presented here.

19 Mrs. Blackburn. Okay. Thank you. My time has expired,
20 and I yield back.

21 I ask unanimous consent that the members' written opening
22 statements be introduced into the record.

23 Ms. Schakowsky. And, Madam Chair, we have provided you a

Kevin M. Murphy

June 28, 2016

Via Email Only to: [REDACTED]

March Bell, Esq.
Majority Staff Director
Select Investigative Panel on Infant Lives
[REDACTED]

Re: Subpoena to Scinto Group, LLP

Dear Mr. Bell:

As you know, this law firm represents the CPA firm, Scinto Group, LLP. Chair Marsha Blackburn of the Select Investigative Panel issued a subpoena dated April 29, 2016, seeking a broad scope of records in the possession of Scinto Group LLP in regard to its tax and consulting services client, StemExpress, LLC. Since then, you and I have had a number of calls and email exchanges about our efforts to respond to the subpoena. I have provided you an email that summarizes the position we have reached under the circumstances. You have asked that I state that position in a formal letter, which is the purpose of this letter.

Various privilege and confidentiality laws related to CPAs and tax preparers prevent a CPA or tax preparer, absent client consent or other exception, from providing client files to non-clients, even when served with a subpoena under certain circumstances. The Select Investigative Panel is clearly a non-client that has requested via subpoena the records of a Scinto Group client, StemExpress, LLC.

It is sometimes difficult to discern whether or not the privilege or confidentiality laws will apply to a particular document request made to a CPA or tax preparer by a non-client, through a subpoena or otherwise. As a result, we first sought to obtain consent from Scinto Group's client, StemExpress, LLC, so that Scinto Group could then unquestionably provide the requested client files to the Select Investigative Panel. StemExpress, LLC, through counsel, has now specifically declined to waive potentially applicable privileges or confidentiality laws and provisions in regard to the client files in the possession of Scinto Group. Further, StemExpress LLC has stated through counsel that it holds Scinto Group accountable to observe and protect any applicable privileges and confidentiality rights that it has in the documents.

March Bell, Esq.

June 28, 2016

Page 2

In light of the position expressed by StemExpress, LLC, Scinto Group has been forced into the difficult position of having to try to determine whether or not the records requests in the subpoena fall within an exception to each and every one of the various privilege and confidentiality laws that could apply. Having now completed that time-consuming analysis, our view is that privilege and/or confidentiality provisions may be found applicable to the documents requested by the Select Investigative Panel in its subpoena to Scinto Group, LLP, even though the request was made via a subpoena. If those privilege or confidentiality laws are applicable, and if Scinto Group were to produce the client records to a non-client (like the Select Investigative Panel) without the client's consent in violation of those applicable privilege and/or confidentiality laws, we believe that Scinto Group could potentially face possible sanctions or adverse licensure action by the California Board of Accountancy, and/or potential liability to its client, StemExpress LLC, and/or possibly even civil or criminal penalties under certain statutes. Therefore, given that potential jeopardy, Scinto Group believes that it is obligated to assert the privilege and confidentiality provisions that it believes may ultimately be found applicable. Therefore, at this time, Scinto Group respectfully declines to produce the requested records.

As noted in my prior correspondence, I have suggested to you that the CPA / tax preparer privilege and confidentiality provisions would not apply if the Select Panel were to simply subpoena the same records directly from StemExpress, LLC. The scope of work of Scinto Group, which only began in 2015, has been limited primarily to tax return preparation and advice. Other than some very limited internal notes made by the CPA's during the preparation of tax returns and discussions with the client, all the records that you seek were either provided to Scinto Group by StemExpress LLC, or else they are final products (e.g. tax returns and schedules) that Scinto Group provided to StemExpress LLC. Therefore, any of the records that you seek from Scinto Group that relate to the accounting ledgers, statements and tax returns of StemExpress are in the possession of StemExpress LLC, and could be easily requested from StemExpress LLC directly.

The specific privilege and/or confidentiality laws that form the basis of our objection to the subpoena are discussed below.

1. Subpoena Validity is in Dispute. Correspondence and a memorandum from the Democratic members of the Select Investigative Panel assert that this subpoena (and others) was issued in violation of House rules, and therefore is or may be invalid. (See, Letter of May 12, 2016 from Committee Democrats to Speaker Ryan; see also, Memorandum of May 25, 2016, From Select Investigative Panel Democratic Staff to Democratic Members of the Select Investigative Panel). When the Committee is itself engulfed in dispute over whether or not the subpoena was properly issued, a recipient of such a subpoena, like Scinto Group, has cause for concern about whether or not it has a legal obligation to respond, especially where

March Bell, Esq.
June 28, 2016
Page 3

privilege and/or confidentiality obligations are imposed by law on the recipient of the subpoena.

2. Confidentiality Required by California Business & Professions Code §5063.3. Scinto Group, LLP is a CPA firm licensed and practicing in California. As such, it is subject to California law governing CPAs. CA Code, Bus. & Prof., §5063.3, states “(a) No confidential information obtained by a licensee, in his or her professional capacity, concerning a client or prospective client, shall be disclosed by the licensee without the written permission of the client or prospective client, except the following:” The code provision then provides some exceptions, none of which appear directly applicable here. One exception states: “(1) Disclosures made by a licensee in compliance with a subpoena or a summons enforceable by order of a court.” But, that exception is probably not applicable, based on the fact that the law appears clearly to require a resolution of the full House before enforcement of a subpoena from a committee or select panel may be sought. (See “Congress’s Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure”, Congressional Research Service Publication, CRS Report No. 7-5700, dated May 8, 2014, at pp. 26-32, and court cases discussed therein). To our knowledge, there has been no full resolution of the House authorizing enforcement of the subpoena. Therefore, at this time, it appears that the subpoena is not “enforceable by order of a court”, and as such, the exception to the California Code provision does not apply.¹ No other exception to that California code provision appears to be potentially applicable.
3. Potential Applicability of 26 U.S.C. §7216 and 26 U.S.C. §6713. These provisions of the Internal Revenue Code prohibit a tax preparer from disclosing to non-clients any records related to the preparation of tax returns for a client. Section 7216 provides for criminal sanctions, and Section 6713 provides for civil sanctions, against a tax preparer that violates these sections. Exceptions may apply. One exception is when

¹ Discussion of the treatment of common law and statutory privileges in the CRS Report 7-5700 at pp. 58-62 is also relevant. While the report summarizes that committees have used discretion in determining whether or not to recognize claims of privilege, it also explains that “the exercise of committee discretion whether to accept a claim of attorney-client privilege has turned on a ‘weighing [of] the legislative need for disclosure against any possible resulting injury’”. Here, as noted above, the same financial and tax documents of StemExpress LLC that the Special Investigative Panel has subpoenaed from Scinto Group can be subpoenaed directly from StemExpress LLC, in which case the privilege and confidentiality issues would not be the same. So, upon weighing the need versus the resulting injury, the balance tips strongly to the conclusion that the Special Investigative Panel should simply subpoena the same records directly from StemExpress LLC. Further, CRS Report 7-5700 at p.58, footnote 452, states that “a valid claim of privilege (specifically attorney-client privilege), free of any taint of waiver, exception or other mitigating circumstance, would merit substantial weight”.

March Bell, Esq.

June 28, 2016

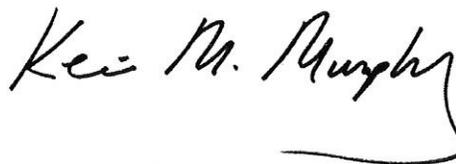
Page 4

the client gives authorization to the tax preparer to make the disclosure. Here, the client has specifically instructed Scinto Goup that it does not waive any rights or privileges that could apply, and it has declined to authorize Scinto Group to make the disclosure. You have suggested the applicability of the exception described in 26 C.F.R. §7216-2(f)(3) for "a subpoena issued by the United States Congress". But, the language of this exception again raises questions. Does it apply to a subpoena issued by a Select Investigative Panel Chair, as opposed to a full house of Congress? Also, does it apply where, as here, a House Resolution permits the issuance of subpoenas by the Panel chair, but the minority members of the Panel have asserted that the subpoena is invalid due to asserted failures in regard to the notice, consultation and reporting requirements of the applicable rules? Based on information currently available to Scinto Group, it believes that at least some doubt remains as to whether or not Sections 7216 and 6713 could apply under these circumstances. If those sections were found to be applicable, then Scinto Group may potentially remain subject to the criminal and/or civil sanctions set forth in those provisions.

If not for the potential application of the privilege and/or confidentiality laws, Scinto Group LLP would be willing and able to comply with a valid subpoena from the Select Investigative Panel. However, in light of the potential application of those laws, under the current circumstances, Scinto Group is not in a position to unilaterally respond to the subpoena with the requested documents, absent client consent.

I understand that you may provide a response to this letter with discussion of these issues and citations to the legal provisions and interpretations that you believe are relevant. If so, I look forward to receipt of that. Alternatively, I again suggest that, instead of further discussion and work on the privilege / confidentiality concerns regarding the client files in the possession of Scinto Group, the Select Investigative Panel can simply issue a subpoena directly to StemExpress LLC for the same accounting and tax records of StemExpress LLC.

Sincerely,



Kevin M. Murphy

cc: Matthew Tallmer, Esq., Investigator, Majority Staff (via email only)

Tallmer, Matthew

From: Bell, March
Sent: Thursday, May 26, 2016 2:27 PM
To: [REDACTED]
Cc: Tallmer, Matthew
Subject: RE: Select Panel Subpoena to Scinto Group LLP

Dear Kevin:

I do not want to advise you about how to best represent your client but you might take a quick look at:

26 CFR 301.7216-2 (f) (3)

Thanks

March Bell

From: Tallmer, Matthew
Sent: Thursday, May 26, 2016 1:22 PM
To: Bell, March
Subject: FW: Select Panel Subpoena to Scinto Group LLP

From: Murphy, Kevin M. [REDACTED]
Sent: Thursday, May 26, 2016 1:20 PM
To: Tallmer, Matthew
Subject: RE: Select Panel Subpoena to Scinto Group LLP

Matt,

This follows up on our discussion today. As I said, I recently received and made an initial review of the documents from Scinto Group. I have begun discussion with counsel for StemExpress about whether or not they will assert privilege or object to the provision of any portions of the Scinto Group documents. As you and I have discussed, Scinto Group's work was primarily just tax return preparation, and my view is that certain provisions of the IRC present an obstacle to our production of such work papers and related documents to a non-client, absent client consent or a court order. So, we are in the process of determining if we will have client consent, and the parameters of that. I anticipate receiving a position from StemExpress in the next week or so. Once I know that position, I can then work on our response to your subpoena. I understand from our call that this process and anticipated timing is agreeable with you.

Also, you asked me to include in this email which IRC provisions that I think may be involved here. I would refer you to 26 USC 7216, 26 USC 6713, and 26 USC 7525, for your consideration.

Kevin

From: Murphy, Kevin M.
Sent: Tuesday, May 10, 2016 10:57 AM
To: 'Tallmer, Matthew'
Cc: Bell, March
Subject: RE: Select Panel Subpoena to Scinto Group LLP

Thank you Matt. I will speak with you and Mr. Bell on Thursday at whichever of the offered times that you select.
Kevin

From: Tallmer, Matthew [REDACTED]
Sent: Tuesday, May 10, 2016 10:50 AM
To: Murphy, Kevin M.
Cc: Bell, March
Subject: RE: Select Panel Subpoena to Scinto Group LLP

As per our agreement, the Panel will postpone the May 11, 2016, production date pending our telephone conversation on Thursday. Do not hesitate to contact me should you have any further questions or issues.

From: Murphy, Kevin M. [mailto:[REDACTED]]
Sent: Tuesday, May 10, 2016 10:30 AM
To: Tallmer, Matthew
Cc: Bell, March
Subject: RE: Select Panel Subpoena to Scinto Group LLP

Mr. Tallmer,
Thanks. To clarify, I did not intend for a call to include minority counsel. I only copied them so that they would have my info and know that I am responding for Scinto Group. For our call on Thursday (with you, me and Mr. Bell), I am available before 10:00 and from 4:30 – 5:30 that day. Let me know if either time frame is available for you. In the interim, since the return date on the subpoena is May 11, can you confirm today that the Majority is agreeable to a reasonable extension of a few weeks, details to be finalized in our call Thursday (or thereafter if Thursday is not available), for Scinto Group's response to the subpoena? We are working on gathering documents for review now.
Kevin

From: Tallmer, Matthew [mailto:[REDACTED]]
Sent: Tuesday, May 10, 2016 9:43 AM
To: Murphy, Kevin M.
Cc: Bell, March
Subject: RE: Select Panel Subpoena to Scinto Group LLP

Dear Mr. Murphy:

Due to an upcoming deposition, we are unavailable to talk until Thursday.

In addition, this subpoena was issued by the Chair, meaning by the Majority. The Minority is free to issue their own demand letters, and we do not include the Minority staff on discussions related to subpoenas issued by the Majority. If the Minority is on the phone call, we will terminate it and call you back. You can feel free to relate our conversation to Ms. Sawyer or any other member of the Minority staff.

From: Murphy, Kevin M. [REDACTED]
Sent: Tuesday, May 10, 2016 9:31 AM
To: Tallmer, Matthew; Bell, March
Cc: Baron, Zachary; Sawyer, Heather
Subject: Select Panel Subpoena to Scinto Group LLP

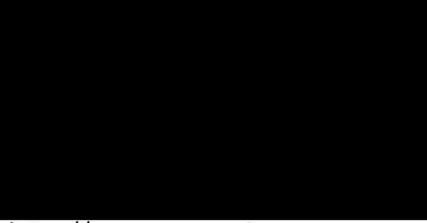
Mr. Tallmer and Mr. Bell:
I have been retained to represent Scinto Group LLP in regard to the subpoena served by the Select Investigative Panel on Infant Lives. I would like to speak with you about the subpoena, and especially about the timing of a response to the

subpoena. I have availability for a call today at 10:30, or from 3:00 – 4:30. Would you let me know if you can do a call at either time? Alternatively, I have availability most of Wednesday morning.

Thank you.

Kevin Murphy

Kevin M. Murphy
Carr Maloney P.C.



<http://www.carrmaloney.com>



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**FEDERAL TRADE COMMISSION v. OWENS-CORNING FIBERGLAS
CORPORATION, ET AL., APPELLANTS v. MICHAEL PERTSCHUK, ET AL;
FEDERAL TRADE COMMISSION, APPELLANT v. OWENS-CORNING
FIBERGLAS CORPORATION, ET AL.**

Nos. 79-1167, 79-1443

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

*626 F.2d 966; 200 U.S. App. D.C. 102; 1980 U.S. App. LEXIS 19687; 1980-1 Trade
Cas. (CCH) P63,228*

**December 11, 1979, Argued
March 13, 1980, Decided**

PRIOR HISTORY: [**1] Appeals from the United States District Court for the District of Columbia (D.C. Miscellaneous No. 78-0313).

COUNSEL: Richard M. Rindler, Washington, D. C., with whom Gilbert E. Geldon, Daniel J. Plaine, Alan S. Ward, John Lewis Smith, III, and Shirley Johnson, Washington, D. C., were on the brief, for appellants in No. 79-1167 and appellees in No. 79-1443.

Warren S. Grimes, Atty., F. T. C., Washington, D. C., with whom Michael N. Sohn, Gen. Counsel, and Leslie Rice Melman, Atty., F. T. C., Washington, D. C., were on the brief, for appellee in No. 79-1167 and cross-appellant in No. 79-1443.

JUDGES: Before TAMM and WALD, Circuit Judges, and HAROLD H. GREENE, * U. S. District Judge for the District of Columbia. Opinion concurring in part and dissenting in part filed by Circuit Judge WALD.

* Sitting by designation pursuant to 28 U.S.C. § 292(a) (1976).

OPINION BY: TAMM

OPINION

[*968] This case comes before us on cross-appeals from an order of the United States District Court for the District of Columbia that enforced, subject to certain conditions, three subpoenas duces tecum

issued by the Federal Trade Commission. The appellants, respondents in the enforcement action, seek [**2] further protections against public disclosure of trade secrets that they assert appear in the documents under subpoena. The Commission disagrees and, in addition, argues that the district court exceeded its authority by attaching conditions to the subpoenas beyond those appearing in the Commission's original orders. We conclude that the issues presented by the appellant are either meritless or not yet ripe for review and that the protective conditions added by the district court are unwarranted. We therefore affirm the order insofar as it enforces the subpoenas as issued, and we vacate those portions of the order that impose further restrictions.

I. BACKGROUND

The facts in this case are straightforward. As part of a nonpublic antitrust investigation of the insulation industry, the Commission staff in July of 1977 issued virtually identical subpoenas duces tecum to [*969] Owens-Corning Fiberglas Corporation, Johns-Manville Corporation, and CertainTeed Corporation, the appellants herein. The subpoenas asked for various documents containing technical, business, and financial information about the three companies. After meetings with members of the Commission staff produced mutually [**3] satisfactory modifications, the appellants submitted nonconfidential documents to the Commission. They refused, however, to turn over certain other documents that they claimed contain trade secrets.¹

1 Specifically, the appellants contend that the documents contain detailed information concerning costs, sales, profits, customers, markets, business plans and strategies, plants and equipment, research and development, and new and secret processes.

The Commission agreed to afford the withheld documents confidential treatment under its customary procedures for handling such information.² Specifically, it committed itself to giving the company that submitted a document ten days' notice before disclosing its contents to anyone outside the Commission. The Commission nevertheless excepted from this procedure official requests from courts or arms of Congress. In these instances, it promised "ten days' prior notice where possible, and in any event as much notice as can reasonably be given." Joint Appendix (J.A.) [**4] at 233, 237, 311, 315 (letters from the Commission staff to appellants' counsel). Subsequently, the appellants tendered additional documents, but they still refused to surrender the rest without further assurances of confidentiality.

2 The Commission's general procedures regarding confidentiality and access appear in the FTC Operating Manual, ch. 15, reprinted in Joint Appendix (J.A.) at 715-42.

On October 23, 1978, the Commission filed a petition in the district court for an order to enforce the subpoenas under section 9 of the Federal Trade Commission Act (FTC Act), *15 U.S.C. § 49 (1976)*. The appellants, respondents in the district court, filed substantially identical counterclaims asking for a declaration that the documents contain trade secrets within the meaning of the Trade Secrets Act, *18 U.S.C. § 1905 (1976)*,³ and section 6(f) of the FTC Act, *15 U.S.C. § 46(f) (1976)*,⁴ and that the documents are exempt from release under the Freedom of Information Act (FOIA), *5 U.S.C. § 552 (1976)*. They also [**5] sought a protective order that would provide additional guarantees of confidentiality.⁵

3 This statute provides:

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes,

operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$ 1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

18 U.S.C. § 1905 (1976).

[**6]

4 This section provides in relevant part that the Commission shall have the power "(to) make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest" FTC Act § 6(f), *15 U.S.C. § 46(f) (1976)* (emphasis added).

5 In particular, the appellants asked the district court to enter an order compelling the Commission (1) not to disclose the documents to persons outside the Commission except pursuant to a formally authorized request from Congress or compulsory process from a court, (2) to notify the appellants immediately in case of such a request, (3) to inform any congressional requestor that the documents contain trade secrets the Commission is prohibited from disclosing publicly, (4) to seek from any judicial requestor in camera treatment of any documents surrendered, and (5) to return the documents, together with all copies, notes, abstracts, or other working materials, to the appellants within 30 days of the conclusion of the investigation or any resulting litigation.

[**7] [970] On January 31, 1979, the court entered an order dismissing the counterclaims and enforcing the subpoenas subject to the Commission's promised procedures regarding confidentiality, with two additions. First, the order requires the Commission in the case of a congressional or a judicial request "immediately, forthwith upon receipt by it of such a request, (to) advise the respondent which had furnished the document, by telephone and by a written communication, that the request has been made and indicate the nature and extent of the request." *FTC v. Owens-Corning Fiberglas Corp.*, Misc. No. 78-313, at 2 (D.D.C. Jan. 31, 1979) (order enforcing subpoenas), reprinted in J.A. at 11, 12. Second, in the case of congressional requests the order obliges the Commission to "verif(y) that the request is made in accordance with

the controlling congressional rule, and (to advise) the requestor that the respondent has claimed that the document contains confidential trade secrets." *Id.* This order is now before us on cross-appeals, the appellants contending that the district court did not go far enough and the Commission that it went too far.

II. COMMISSION DISCLOSURE OF CONFIDENTIAL INFORMATION

[**8] Before embarking on an analysis of the particular arguments raised by the parties, we believe it useful to recapitulate in general terms the law governing Commission disclosure of information contained in confidential documents it has obtained under subpoena. Specifically, appellants are troubled by requests from two sources, Congress and the general public. ⁶ We therefore shall review the Commission's formal release of secret information to these groups, either voluntarily or pursuant to some request that by law it must grant.

⁶ Appellants do not appear concerned with thefts or "leaks" from the Commission. We note that any officer or employee of the Commission who releases information without authorization may be fined up to \$ 5,000 and imprisoned up to one year. *FTC Act § 10, 15 U.S.C. § 50 (1976).*

A. Congressional Requests

Recently this court has had several occasions to discuss congressional requests for confidential documents in the hands of the Commission. In particular, we have held explicitly that [**9] the Commission may not deny Congress access to confidential documents, including those that contain trade secrets. E.g., *Exxon Corp. v. FTC*, 191 U.S. App. D.C. 59, 589 F.2d 582, 585-86 (D.C. Cir. 1978), cert. denied, 441 U.S. 943, 99 S. Ct. 2160, 60 L. Ed. 2d 1044 (1979); *Ashland Oil, Inc. v. FTC*, 179 U.S. App. D.C. 22, 548 F.2d 977, 979 (D.C. Cir. 1976). Release to a congressional requestor is not a public disclosure forbidden by section 6(f) of the *FTC Act*. *Exxon Corp. v. FTC*, 589 F.2d at 589; *Ashland Oil, Inc. v. FTC*, 548 F.2d at 979. Moreover, courts may not require the Commission to delay surrendering documents to Congress to notify affected parties in advance, for the judiciary must refrain from slowing or otherwise interfering with the legitimate investigatory functions of Congress. *FTC v. Anderson*, 631 F.2d 741 (D.C. Cir. 1979); *Exxon Corp. v. FTC*, 589 F.2d at 588-89. Once documents are in congressional hands, "courts must presume that the committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties." *Id.* at 589 (citing *Ashland Oil, Inc. v. FTC*, 548 F.2d at 979). ⁷ A court may not block disclosure of information in Congress's [**10] possession, at least when the disclosure would serve a

valid legislative purpose. *Doe v. McMillan*, 412 U.S. 306, 93 S. Ct. 2018, 36 L. Ed. 2d 912 (1973) (construing the *speech and debate clause*, *U.S. Const. art. I, § 6, cl. 1*). ⁸

⁷ Language in some cases indicates that courts may be able to order an agency not to deliver documents when it is "evident" that the congressional requestor intends to divulge trade secrets without good cause. See *Exxon Corp. v. FTC*, 589 F.2d at 589; *Ashland Oil, Inc. v. FTC*, 548 F.2d at 979.

⁸ The Supreme Court in *McMillan* held that members of Congress and their staffs were absolutely immune from civil liability for circulating among persons involved in the legislative process confidential information on the performance of identified children in the District of Columbia school system. 412 U.S. at 312, 93 S. Ct. at 2024. Nevertheless, the Court also held that the children could recover damages from government officials who executed Congress's order to publish this information to the general public. *Id.* at 315-16, 93 S. Ct. at 2026. The Court reasoned that the *speech and debate clause* protects only acts taken in furtherance of legislative functions. Dissemination of information to members of Congress and their aides, even if accessible by the press and the public, is part of the lawmaking process; general, public distribution of information beyond Congress and its functionaries serves no legitimate legislative purpose and thus receives no constitutional protection. *Id.* at 317, 324, 93 S. Ct. at 2027, 2030. Cf. *Hutchinson v. Proxmire*, 443 U.S. 111, 99 S. Ct. 2675, 61 L. Ed. 2d 411 (1979) (members of Congress not immune from libel actions based on statements in newsletters and press releases).

[**11] B. Public Requests Under the FOIA

Members of the public also may obtain information from agency "records" [**971] under the Freedom of Information Act. See 5 U.S.C. § 552(a)(3) (1976). ⁹ An agency must release the material sought unless it falls within an exemption found in the statute. See *id.* § 552(b)-(c). The fourth such exemption permits an agency to withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential. . . ." *Id.* § 552(b) (4). The exceptions listed in the FOIA do not prohibit an agency from releasing material sought; they only allow the agency to deny access. *Chrysler Corp. v. Brown*, 441 U.S. 281, 293, 99 S. Ct. 1705, 1713, 60 L. Ed. 2d 208 (1979). Nevertheless, the Trade Secrets Act ¹⁰ expressly forbids an agency to



EXXON CORPORATION, APPELLANT v. FEDERAL TRADE COMMISSION, et al. Civil 76-0812 KERR-McGEE CORPORATION, APPELLANT v. FEDERAL TRADE COMMISSION, et al. Civil 76-0814 UNION CARBIDE CORPORATION, APPELLANT v. FEDERAL TRADE COMMISSION, et al. Civil 76-0793

Nos. 77-1302 to 77-1304

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

589 F.2d 582; 191 U.S. App. D.C. 59; 1978 U.S. App. LEXIS 8330; 1978-2 Trade Cas. (CCH) P62,302

February 13, 1978, Argued
October 19, 1978, Decided

SUBSEQUENT HISTORY: [**1] Rehearing Denied December 6, 1978. As Amended December 19, 1978.

PRIOR HISTORY: Appeals from the United States District Court for the District of Columbia.

COUNSEL: Roberts B. Owen, Washington, D. C., for appellant Exxon Corp.; argued on behalf of all appellants.

J. Randolph Wilson and Steven S. Rosenthal, Washington, D. C., were on the brief, for appellant Kerr-McGee Corp.

James H. Wallace, Jr., and Thomas C. Arthur, Washington, D. C., were on the brief, for appellant Union Carbide Corp.

Gerald P. Norton, Acting Gen. Counsel, F. T. C., Washington, D. C., with whom Earl J. Silbert, U. S. Atty., John A. Terry and Joel S. Perwin, Asst. U. S. Attys., Jerold D. Cummins, Acting Asst. Gen. Counsel, and Arthur W. Adelberg, Atty., F. T. C., Washington, D. C., were on the brief, for appellees.

Michael R. Lemov, Washington, D. C., was on the brief, for amicus curiae, Congressman John E. Moss, urging affirmance.

JUDGES: Before ROBINSON, MacKINNON and ROBB, Circuit Judges. Opinion for the court filed by Circuit Judge MacKINNON.

OPINION BY: MacKINNON

OPINION

[*585] Exxon appeals from the district court's refusal to grant injunctive or declaratory relief and from its subsequent denial [**2] of a stay pending appeal. At issue is whether any protective measures should be imposed on the Federal Trade Commission (hereafter the "Commission" or the "FTC") with respect to the divulgence to Congress of "trade secrets" obtained by it under the compulsion of a subpoena. ¹ The controlling statute provides:

1. There is no question that the information in question here qualifies under this court's definition of "confidential" information for purposes of the Freedom of Information Act, 5 U.S.C. § 552 (1970). In *National Parks and Conservation Assoc. v. Morton*, 162 U.S.App.D.C. 223, 228, 498 F.2d 765, 770 (1974), Rev'g 351 F. Supp. 404 (D.D.C.1972) we stated that information will be considered confidential if its disclosure is likely to "cause substantial harm to the competitive position of the person from whom the information was obtained." Production forecasts such as are at question in this case would clearly cause such

589 F.2d 582, *; 191 U.S. App. D.C. 59;
1978 U.S. App. LEXIS 8330, **; 1978-2 Trade Cas. (CCH) P62,302

competitive harm were they disclosed to competitors. See JA 64 (Dickeman Affidavit for Exxon Co.); JA 73 (Zitting Affidavit for Kerr-McGee Co.); JA 78 (Thurber Affidavit for Union Carbide Co.). Trade Secrets and other confidential data are not immune to FTC investigation, *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d 993 (10th Cir.), Cert. denied, 380 U.S. 964, 85 S. Ct. 1110, 14 L. Ed. 2d 155 (1965). For the broad range of the Commission's subpoena power in general, See, e. g., *Menzies v. FTC*, 242 F.2d 81 (4th Cir.), Cert. denied, 353 U.S. 957, 77 S. Ct. 863, 1 L. Ed. 2d 908 (1957); 12 Von Kalinowski, Trade Regulation § 86.06 (1977).

[**3] The (Federal Trade) Commission shall also have power

(f) To make public from time to time such portions of the information obtained by it hereunder, Except trade secrets and names of customers, as it shall deem expedient in the public interest . . .

15 U.S.C. § 46(f) (emphasis added). The parties do not dispute, nor could they after our decision in *Ashland Oil, Inc. v. FTC*, 179 U.S.App.D.C. 22, 548 F.2d 977 (1976), that Congress has a right of access to such information, [*586] including trade secrets. The issue before us concerns solely the question of notice to parties prior to disclosure of their confidential information and of safeguards to ensure the continued confidentiality of such information once disclosed to the Congress.

I

In 1975, pursuant to a subpoena, Exxon, Kerr-McGee, and Union Carbide made available to the Commission information relating to their ownership, operation of, and future expectations for their uranium holdings. ² It is undisputed that some of this material involved trade secrets, particularly the data [**4] concerning the production and projected yield of individual mines. In April of 1976, in the course of considering S. 489, 94th Cong., 1st Sess., which proposed prohibiting oil companies from owning interests in fuel reserves other than oil and gas, Senator Hart wrote to the Commission on official stationery of the Senate Judiciary Subcommittee on Antitrust and Monopoly requesting the Commission to make available all information it had concerning the coal and uranium holdings of the oil companies. ³ The F.T.C., because of the relationship of its functions to those of Congress, treats such congressional requests as compulsive, even though they lack the formal status of congressional

subpoenas. However, the Commission had previously assured the companies in writing that in the event of any congressional request for confidential information (trade secrets), it would both advise the Members of Congress who submitted the request that the information should be considered confidential when received, and give the companies themselves ten days prior notice of disclosure, whenever such notice was "reasonably possible" (Government's Brief at 2-3).

2. Appellant Union Carbide also submitted, and sought to protect, data relating to its coal holdings. Government Brief at 2-3.

[**5]

3. Senator Hart at the time was Chairman of the Senate Subcommittee on Antitrust and Monopoly. He wrote to the FTC following receipt of a letter from Senator Abourezk, also a member of the Subcommittee on Antitrust and Monopoly. In his letter Senator Abourezk suggested that the information in the FTC's possession was "crucial" to the consideration of S. 489. JA 61.

In early May, the Commission notified appellants of the subcommittee's requests, and appellant Union Carbide quickly obtained a court order restraining the disclosure of the requested information until ten days after the decision in the then pending *Ashland Oil, Inc. v. F.T.C.* case. Shortly after the Union Carbide order was issued, the subcommittee forwarded a formal request for immediate access to the information, and the Commission informed the parties that it would disclose the data requested the following day, except insofar as protected by the court order obtained by Union Carbide. At this point, Kerr-McGee and Exxon also succeeded, despite only 23 hours advance notice, in obtaining a preliminary injunction barring disclosure [**6] until the decision in *Ashland Oil*.

Some months later, in September, 1976, in *Ashland Oil, Inc. v. F.T.C.*, 179 U.S.App.D.C. 22, 548 F.2d 977 (1976) this court decided that it was permissible for the Commission to disclose confidential information to Congress. ⁴ The district court thereupon dissolved the preliminary injunction granted to appellants, on the grounds that they were unlikely to succeed on the merits, as *Ashland Oil* had determined that disclosure to Congress did not constitute "public disclosure," and also that the companies were not threatened with irreparable injury. ⁵ The district court also denied appellants' request that the Commission be required to give ten days advance notice before revealing [*587] trade secrets to Congress. From this decision the appellants briefly obtained a stay pending appeal or until "further order of



**ASHLAND OIL, INC., APPELLANT v. FEDERAL TRADE COMMISSION, ET AL.
ASHLAND OIL, INC. v. FEDERAL TRADE COMMISSION, ET AL. JOHN E. MOSS, CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, UNITED STATES HOUSE OF REPRESENTATIVES, APPELLANT**

Nos. 76-1174, 76-1304

**UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT**

548 F.2d 977; 179 U.S. App. D.C. 22; 1976 U.S. App. LEXIS 7063; 1976-2 Trade Cas. (CCH) P61,088

**May 10, 1976, Argued
September 20, 1976, Decided**

SUBSEQUENT HISTORY: [**1] Rehearing Denied March 2, 1977.

PRIOR HISTORY: Appeals from the United States District Court for the District of Columbia (D.C. Civil Action 75-1956).

COUNSEL: Ray S. Bolze, with whom Roger C. Simmons, was on the brief for appellant in No. 76-1174 and appellee Ashland Oil, Inc., in No. 76-1304.

Joseph A. Califano, Jr., with whom Richard M. Cooper and Benjamin W. Heineman, Jr., were on the brief for appellant in No. 76-1304 and appellee Moss in No. 76-1174.

Edwin E. Huddleson, III, Attorney, Department of Justice, with whom Rex E. Lee, Assistant Attorney General, Earl J. Silbert, United States Attorney, Robert J. Lewis, General Counsel, Federal Trade Commission, Gerald P. Norton, Deputy General Counsel, Gerald Harwood, Assistant General Counsel, William A. E. Doying, Attorney, Federal Trade Commission and Leonard Schaitman, Attorney, Department of Justice, were on the brief for appellee, Federal Trade Commission, et al., in No. 76-1174.

JUDGES: Bazelon, Chief Judge, MacKinnon and Robb, Circuit Judges. Dissenting opinion filed by Circuit Judge MacKinnon.

OPINION BY: PER CURIAM

OPINION

[*979] This action was brought by Ashland Oil, Inc. to enjoin the Federal Trade Commission from transferring [**2] information obtained from Ashland to the House Subcommittee on Oversight and Investigation of the Committee on Interstate and Foreign Commerce. The Subcommittee Chairman, Rep. John E. Moss, intervened. The information in question consists of Ashland's reserve estimates for all its natural gas leases and contracts on federal lands. All parties concede this information is a "trade secret" of great competitive value to Ashland. It is also of great interest to the Subcommittee for whatever light it may cast on the causes of the current natural gas shortage. *See generally FTC v. Texaco, 170 U.S. App. D.C. 323, 517 F.2d 137 (1975), vacated and rehearing en banc ordered (Feb. 6, 1976).*

Judge Corcoran denied Ashland's request for preliminary and permanent injunctive relief in a comprehensive opinion. *409 F. Supp. 297 (1976).* Ashland's central argument is that experience shows that if the information is made available to Congress, it will inevitably be "made public." This in turn is alleged to

violate the prohibition in 15 U.S.C. § 46 [**3] (f) against the FTC's "[making] public" trade secrets. ¹ Judge Corcoran rejected this argument on the grounds that "the courts must presume that the committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties," 409 F. Supp. at 308. Concluding that Ashland's showing was insufficient to overcome this presumption, the court held that no likelihood of irreparable injury warranting an injunction had been established, *id.*, 309.

¹ The text of 15 U.S.C. § 46(f) (1970) is as follows:

The Commission shall also have power - . . .

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

[**4] We affirm, essentially for the reasons stated in Judge Corcoran's opinion.

I

No substantial showing was made that the materials in the possession of the FTC will necessarily be "made public" if turned over to Congress. Therefore, we need not decide what application, if any, 15 U.S.C. § 46(f) might have if it were evident that Congress intended to "make public" trade secrets. At a minimum, we think it is clear that absent such a showing, 15 U.S.C. § 46(f) does not preclude the FTC from transmitting trade secrets to Congress pursuant either to subpoena or formal request.

² At argument, Ashland's counsel conceded that "the only question here is whether this [data] would be kept confidential by Mr. Moss's committee [sic]," May 10, 1976, Tr., 7, and that if it would, the subcommittee was "entitled" to the information. *Id.*

II

Unlike the dissent, we find it unnecessary [**5] to decide whether the subpoena issued for the data was valid under House Rules. The FTC's decision to turn over the materials in question was not based on - and in fact predated - issuance of the subpoena. On [*980] October 29, 1975, Congressman Moss, in his capacity as Subcommittee Chairman, wrote to the FTC requesting all data gathered by the Commission relating to extensions of oil and gas leases on federal lands. J.A. 36-37. On November 18, 1975, Chairman Engman of the FTC responded that "[the] Commission has determined to grant your request" and ". . . will deliver the information requested on November 28, 1975." J.A. 38-39. By telephone and confirming letter of November 18, the FTC notified Ashland that the agency planned to release the requested information to the Subcommittee. J.A. 40. Subsequently Ashland filed this action, and on November 24, Judge Corcoran issued a temporary restraining order precluding the turnover. J.A. 49-50. Only then, on December 2, 1975, did the Subcommittee issue its subpoena. J.A. 52-53.

It is clear that but for the temporary restraining order, the FTC would have submitted Ashland's data to the Subcommittee; indeed, on November 28, [**6] the FTC did deliver to the Subcommittee similar data from other companies, which had not challenged the release in court. J.A. 60. The dissent does not, and cannot, deny that the FTC action challenged in this case was bottomed on a Congressional request for the data, not the subsequent subpoena. Nor does the dissent suggest that 15 U.S.C. § 46(f) must be read differently as a matter of law where a request, rather than a subpoena, is involved. The dissent's entire discussion of the subpoena rests solely on an interpretation of statements made by Government counsel during oral argument. ³ As the dissent interprets it, this exchange indicates that "the legal position of the United States before this Court is that any presently intended compliance is based solely on the subpoena, and on no other request." Dissent, 5.

³ The text of the exchange in question was as follows:

GOVERNMENT COUNSEL:
Chief Judge Bazelon, may it please the court, the central issue in this case is whether Section 46(f) of the Federal Trade Commission Act gives the Commission any legal basis or any discretion to refuse to comply with a valid Congressional subpoena for trade secret information in the



**JAYMAR-RUBY, INC. v. FEDERAL TRADE COMMISSION and Michael N.
Sohn, General Counsel, Federal Trade Commission**

No. S80-107

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
INDIANA, SOUTH BEND DIVISION**

496 F. Supp. 838; 1980 U.S. Dist. LEXIS 15215; 1981-1 Trade Cas. (CCH) P63,926

September 8, 1980

COUNSEL: [**1] James Bush, Charles Stewart, William Spangler, Sr., Merrillville, Ind., for plaintiff.

David Ready, U. S. Atty., South Bend, Ind., Patrick J. Quinlan, Providence, R. I., for defendants.

OPINION BY: SHARP

OPINION

[*840] MEMORANDUM AND ORDER

Jaymar brings this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. Jaymar is an Indiana Corporation with its principal place of business in Michigan City, Indiana. To date, sixteen (16) states have intervened as Defendants, pursuant to *Federal Rule of Civil Procedure 24*. This Court has jurisdiction over this proceeding, pursuant to 28 U.S.C. § 1331(a) dealing with a federal question in a suit against an agency of the United States. Venue is proper in this Judicial District, pursuant to 28 U.S.C. § 1391(e). Also, this is an actual controversy, definite and concrete, touching the legal relations of parties having adverse legal interests, which admit to specific relief through a decree of the Court. Further, the Court has had the assistance of extensive pleadings, briefs and a hearing on this matter and finds that a Declaratory Judgment will provide an expeditious and economical determination of the entire controversy.

FACTUAL [2] BACKGROUND**

The Federal Trade Commission ("F.T.C.") is an administrative agency, created by the Federal Trade Commission Act ("The Act"), 15 U.S.C. §§ 41 *et seq.* (1976). The F.T.C. is authorized and directed by Section

5 of the Act, to prohibit unfair methods of competition and unfair or deceptive acts or practices, 15 U.S.C. § 45 (1976). To achieve this goal, it is empowered to gather and compile information; and investigate the organization, conduct, practices and management of corporations in or affecting commerce. It is also authorized to make public such information as it deems expedient in the public interest, and to make reports and recommendations for legislation to Congress. *Id.* § 46.

Under this statutory mandate, the F.T.C. initiated nonpublic investigation of the Advertising Checking Bureau, an organization which provides advertising services to its clients. Jaymar-Ruby, Inc., ("Jaymar") is a client of the Advertising Checking Bureau, which helps to market Jaymar's product. Pursuant to this investigation, the F.T.C. initiated an investigation of Jaymar and certain of its affiliates. On June 13, 1978, the Commission issued a subpoena duces tecum, requiring Jaymar to furnish [**3] the F.T.C. documents relating to its marketing, distribution and pricing practices. Jaymar submitted documents consisting of internal correspondence and memoranda, [*841] sales and financial statistics, a sales manual and other documents. Some of these documents reveal the names and addresses of customers, marketing strategies, product allocation programs, and cost and profit data. It is these later items that Jaymar contends are trade secrets in the highly competitive clothing industry, and seeks to prevent their disclosure to the requesting State Attorneys General.

The Commission investigation of Jaymar ended in November, 1979 with the issuance of a Commission Complaint and a Consent Order, requiring Jaymar to cease and desist from certain acts, practices and methods of competition. The Order enjoined Jaymar from fixing,

from Overton Park is mechanistic and does not focus on the nature of the administrative action involved here. Its application here is inconsistent with the Court's analysis in Overton Park, and other decisions explaining when agency action involves unreviewable discretion; e.g., *Southern Ry. v. Seaboard Allied Mining Corp.*, 442 U.S. 444, 454, 99 S. Ct. 2388, 2394, 60 L. Ed. 2d 1017 (1979); *Morris v. Gressette*, 432 U.S. 491, 501, 97 S. Ct. 2411, 2418, 53 L. Ed. 2d 506 (1977); *Ass'n of Data Processing Serv. Organizations v. Camp*, 397 U.S. 150, 157, 90 S. Ct. 827, 831, 25 L. Ed. 2d 184 (1970).

Some Courts have employed a pragmatic analysis in determining whether a discretionary agency determination is the proper subject of judicial review. See, e.g., *Natural Resources Defense Council, Inc. v. SEC*, 196 U.S. App. D.C. 124, 606 F.2d 1031, 1043-1044 (D.C.Cir.1979); *Greater N. Y. Hosp. Ass'n v. Mathews*, 536 F.2d 494, 498 (2d Cir. 1970). In the absence of a clear indication of congressional purpose, these Courts have focused on three factors: (1) the appropriateness of the issues raised for review by the Courts; (2) the impact of review on the effectiveness of the agency in carrying out its [**16] assigned role; and (3) the need for judicial supervision to safeguard the interest of the plaintiffs. See Saferstein, *Nonreviewability: A Functional Analysis of "Committed to Agency Discretion,"* 82 Harv.L.Rev. 367, 371 (1968).

Consideration of these facts in the present context strongly supports nonreviewability. Review would undermine the effective and orderly conduct of State investigations by inviting companies to engage in disruptive and dilatory litigation of ancillary procedural issues in the Courts.

Review of the Commission's decision would clearly undercut the legislative interest behind the Improvements Act. Congressman Preyer eloquently describes the purpose of amending Section 6(f) as avoiding litigation (Comm.Mem. 34), not spawning [*845] new cases on whether the Commission has properly exercised its discretion.

Congress has plainly decided what the Commission should take into account in responding to requests for information by State Attorneys General: "prior certification . . . that such information will be maintained in confidence and will be used only for official law enforcement purposes." Further, it is clear that the State Attorneys General are in a better [**17] position than the Commission or the Courts to determine, in the context of pertinent state laws, which specific documents in the files are relevant to their investigations. Nor is there any requirement in the statute that consideration be given to the other factors Jaymar seeks to interject. In short, the necessary clear and convincing evidence that

Congress meant to prohibit judicial review of the Commission's limited decision to release documents to State law enforcement agencies is provided by the language of the statute, its place within the statutory design, and its legislative history. Therefore, the decision to disclose the Jaymar files is a nonreviewable discretionary function, exempt under the Administrative Procedure Act, 5 U.S.C. § 701(a)(2).

Jaymar next argues that sharing information with a State law enforcement agency, even one which has committed to keep such information confidential, nonetheless constitutes a "taking" of property for a public use without just compensation. Merely providing the information to a State law enforcement agency would not "destroy" Jaymar's "trade secrets" any more than would providing the information to the Commission in the first place. [**18] Thus, Jaymar's argument depends on its assumption that because the material is provided to State Attorneys General under Section 6(f) of the FTC Act, the Commission will be required to release Jaymar's confidential information to its competitors under the FOIA. However, the Improvements Act provides for a blanket FOIA exemption for documents provided to the Commission pursuant to subpoena, and forbids the Commission to make public confidential financial or commercial information. Federal Trade Commission Improvements Act of 1980, Section 14(f). The exemption applies to documents in the possession of the Commission on the effective date of the Improvements Act. Thus Congress has effectively foreclosed the major "risk" which Jaymar purports to fear.

Nor can Jaymar assume that the States will make public the information which they receive in violation of the agreements of confidentiality which they have signed. Such an assumption violates the presumption of regularity which attaches to government agreements.

Thus while Courts have held that as a matter of law, it cannot be presumed that private persons will honor commitments not to disclose information (*Sears, Roebuck & Co. v. EEOC*, [**19] 189 U.S. App. D.C. 163, 581 F.2d 941, 946-47 (D.C.Cir.1978)), Courts do presume that government officials will honor similar commitments. See, e.g., *Exxon Corp. v. FTC*, 191 U.S. App. D.C. 59, 589 F.2d 582, 586 n.4, 589 (D.C.Cir.1978), cert. denied, 441 U.S. 943, 99 S. Ct. 2160, 60 L. Ed. 2d 1044 (1970); *Ashland Oil, Inc. v. FTC*, 179 U.S. App. D.C. 22, 548 F.2d 977, 979 (D.C.Cir.1976).

Moreover, the notion that the mere "risk" of public disclosure or disclosure to competitors transforms the compelled submission of confidential information into a "taking" of property within the *Fifth Amendment* if untenable. The D. C. Circuit has recently held that no

United States". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§ 191. Oaths to witnesses

The President of the Senate, the Speaker of the House of Representatives, or a chairman of any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or of a committee of the whole, or of any committee of either House of Congress, is empowered to administer oaths to witnesses in any case under their examination.

Any member of either House of Congress may administer oaths to witnesses in any matter depending in either House of Congress of which he is a Member, or any committee thereof.

(R.S. § 101; June 26, 1884, ch. 123, 23 Stat. 60; June 22, 1938, ch. 594, 52 Stat. 942, 943.)

CODIFICATION

R.S. § 101 derived from acts May 3, 1798, ch. 36, § 1, 1 Stat. 554, and Feb. 8, 1817, ch. 10, 3 Stat. 345.

R.S. § 101 constitutes first sentence, and act June 26, 1884, constitutes second sentence.

AMENDMENTS

1938—Act June 22, 1938, reenacted section without change.

§ 192. Refusal of witness to testify or produce papers

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

(R.S. § 102; June 22, 1938, ch. 594, 52 Stat. 942.)

CODIFICATION

R.S. § 102 derived from act Jan. 24, 1857, ch. 19, § 1, 11 Stat. 155.

AMENDMENTS

1938—Act June 22, 1938, reenacted section without change.

§ 193. Privilege of witnesses

No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

(R.S. § 103; June 22, 1938, ch. 594, 52 Stat. 942.)

CODIFICATION

R.S. § 103 derived from act Jan. 24, 1862, ch. 11, 12 Stat. 333.

AMENDMENTS

1938—Act June 22, 1938, reenacted section without change.

§ 194. Certification of failure to testify or produce; grand jury action

Whenever a witness summoned as mentioned in section 192 of this title fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action.

(R.S. § 104; July 13, 1936, ch. 884, 49 Stat. 2041; June 22, 1938, ch. 594, 52 Stat. 942.)

CODIFICATION

R.S. § 104 derived from act Jan. 24, 1857, ch. 19, § 3, 11 Stat. 156.

AMENDMENTS

1938—Act June 22, 1938, substituted "section 102" for "section 102 of the Revised Statutes" and inserted "or any joint committee established by a joint or concurrent resolution of the two Houses of Congress".

1936—Act July 13, 1936, substituted "section 102 of the Revised Statutes" for "section 102", inserted provisions as to failure to produce and refusal to answer, required a statement of facts constituting the failure to be reported to and filed with the President of the Senate or the Speaker of the House, and directed that said President or Speaker certify the facts to the appropriate United States attorney in lieu of prior certification to the district attorney for the District of Columbia.

§ 194a. Request by Congressional committees to officers or employees of Federal departments, agencies, etc., concerned with foreign countries or multilateral organizations for expression of views and opinions

Upon the request of a committee of either House of Congress, a joint committee of Congress, or a member of such committee, any officer or employee of the Department of State, the Agency for International Development, or any other department, agency, or independent establishment of the United States Government primarily concerned with matters relating to foreign countries or multilateral organizations may express his views and opinions, and make recommendations he considers appropriate, if the request of the committee or member of the committee relates to a subject which is within the jurisdiction of that committee.

require the defendant to give such notice, the court shall consider the factors set forth in section 3553(a) to the extent that they are applicable and shall consider the cost involved in giving the notice as it relates to the loss caused by the offense, and shall not require the defendant to bear the costs of notice in excess of \$20,000.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3551, 3553, 3563 of this title; title 28 section 994.

§ 3556. Order of restitution

The court, in imposing a sentence on a defendant who has been found guilty of an offense shall order restitution in accordance with section 3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991; amended Pub. L. 99-646, § 20(b), Nov. 10, 1986, 100 Stat. 3596; Pub. L. 104-132, title II, § 202, Apr. 24, 1996, 110 Stat. 1227.)

AMENDMENTS

1996—Pub. L. 104-132 substituted “shall order restitution” for “may order restitution” and “section 3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section” for “sections 3663 and 3664”.

1986—Pub. L. 99-646 substituted “may order restitution in accordance with sections 3663 and 3664” for “under this title, or an offense under section 902(h), (i), (j), or (n) of the Federal Aviation Act of 1958 (49 U.S.C. 1472), may order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant make restitution to any victim of the offense in accordance with the provisions of sections 3663 and 3664”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104-132, set out as a note under section 2248 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 20(c) of Pub. L. 99-646 provided that: “The amendments made by this section [amending this section and section 3663 of this title] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1987].”

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3551, 3563, 3612, 5037 of this title; title 28 section 994.

§ 3557. Review of a sentence

The review of a sentence imposed pursuant to section 3551 is governed by the provisions of section 3742.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

§ 3558. Implementation of a sentence

The implementation of a sentence imposed pursuant to section 3551 is governed by the provisions of chapter 229.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

§ 3559. Sentencing classification of offenses

(a) CLASSIFICATION.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

- (1) life imprisonment, or if the maximum penalty is death, as a Class A felony;
- (2) twenty-five years or more, as a Class B felony;
- (3) less than twenty-five years but ten or more years, as a Class C felony;
- (4) less than ten years but five or more years, as a Class D felony;
- (5) less than five years but more than one year, as a Class E felony;
- (6) one year or less but more than six months, as a Class A misdemeanor;
- (7) six months or less but more than thirty days, as a Class B misdemeanor;
- (8) thirty days or less but more than five days, as a Class C misdemeanor; or
- (9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) EFFECT OF CLASSIFICATION.—Except as provided in subsection (c), an offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

(c) IMPRISONMENT OF CERTAIN VIOLENT FELONS.—

(1) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if—

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of—

- (i) 2 or more serious violent felonies; or
- (ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term “assault with intent to commit rape” means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

(B) the term “arson” means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

(C) the term “extortion” means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

(D) the term “firearms use” means an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

(E) the term “kidnapping” means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

(F) the term “serious violent felony” means—

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

(G) the term “State” means a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States; and

(H) the term “serious drug offense” means—

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)); or

(ii) an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

(3) NONQUALIFYING FELONIES.—

(A) ROBBERY IN CERTAIN CASES.—Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(F)(i) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and

(ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person.

(B) ARSON IN CERTAIN CASES.—Arson shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) the offense posed no threat to human life; and

(ii) the defendant reasonably believed the offense posed no threat to human life.

(4) INFORMATION FILED BY UNITED STATES ATTORNEY.—The provisions of section 411(a) of the Controlled Substances Act (21 U.S.C. 851(a)) shall apply to the imposition of sentence under this subsection.

(5) RULE OF CONSTRUCTION.—This subsection shall not be construed to preclude imposition of the death penalty.

(6) SPECIAL PROVISION FOR INDIAN COUNTRY.—No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to this subsection for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151) and which occurs within the boundaries of such Indian country unless the governing body of the tribe has elected that this subsection have effect over land and persons subject to the criminal jurisdiction of the tribe.

(7) RESENTENCING UPON OVERTURNING OF PRIOR CONVICTION.—If the conviction for a serious violent felony or serious drug offense that was a basis for sentencing under this subsection is found, pursuant to any appropriate State or Federal procedure, to be unconstitutional or is vitiated on the explicit basis of innocence, or if the convicted person is pardoned

on the explicit basis of innocence, the person serving a sentence imposed under this subsection shall be resentenced to any sentence that was available at the time of the original sentencing.

(d) DEATH OR IMPRISONMENT FOR CRIMES AGAINST CHILDREN.—

(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2422, 2423, or 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if—

(A) the victim of the offense has not attained the age of 14 years;

(B) the victim dies as a result of the offense; and

(C) the defendant, in the course of the offense, engages in conduct described in section 3591(a)(2).

(2) EXCEPTION.—With respect to a person convicted of a Federal offense described in paragraph (1), the court may impose any lesser sentence that is authorized by law to take into account any substantial assistance provided by the defendant in the investigation or prosecution of another person who has committed an offense, in accordance with the Federal Sentencing Guidelines and the policy statements of the Federal Sentencing Commission pursuant to section 994(p) of title 28, or for other good cause.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1991; amended Pub. L. 100-185, §5, Dec. 11, 1987, 101 Stat. 1279; Pub. L. 100-690, title VII, §7041, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 103-322, title VII, §70001, Sept. 13, 1994, 108 Stat. 1982; Pub. L. 105-314, title V, §501, Oct. 30, 1998, 112 Stat. 2980; Pub. L. 105-386, §1(b), Nov. 13, 1998, 112 Stat. 3470.)

AMENDMENTS

1998—Subsec. (c)(2)(F)(i). Pub. L. 105-386 inserted “firearms possession (as described in section 924(c));” after “firearms use;”.

Subsec. (d). Pub. L. 105-314 added subsec. (d).

1994—Subsec. (b). Pub. L. 103-322, §70001(1), substituted “Except as provided in subsection (c), an” for “An”.

Subsec. (c). Pub. L. 103-322, §70001(2), added subsec. (c).

1988—Subsec. (a). Pub. L. 100-690, §7041(a)(1), substituted “classified if the maximum term of imprisonment authorized is—” for “classified—

“(1) if the maximum term of imprisonment authorized is—”.

Subsec. (a)(1) to (9). Pub. L. 100-690, §7041(a)(2), (b), redesignated subpars. (A) to (I) as pars. (1) to (9), respectively, and substituted “twenty-five” for “twenty” in pars. (2) and (3).

1987—Subsec. (b). Pub. L. 100-185 substituted “, except that the maximum term of imprisonment is the term authorized by the law describing the offense.” for “except that:

“(1) the maximum fine that may be imposed is the fine authorized by the statute describing the offense, or by this chapter, whichever is the greater; and

“(2) the maximum term of imprisonment is the term authorized by the statute describing the offense.”

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3154, 3582 of this title; title 10 section 1132; title 49 section 46502.

SUBCHAPTER B—PROBATION

SUBCHAPTER B—PROBATION¹

| | |
|------------|--|
| Sec. 3561. | Sentence of probation. |
| 3562. | Imposition of a sentence of probation. |
| 3563. | Conditions of probation. |
| 3564. | Running of a term of probation. |
| 3565. | Revocation of probation. |
| 3566. | Implementation of a sentence of probation. |

AMENDMENTS

1994—Pub. L. 103-322, title XXXIII, §33001(3), Sept. 13, 1994, 108 Stat. 2143, transferred analysis for this subchapter to follow heading for this subchapter.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3551, 3601, 3605 of this title.

§ 3561. Sentence of probation

(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to a term of probation unless—

(1) the offense is a Class A or Class B felony and the defendant is an individual;

(2) the offense is an offense for which probation has been expressly precluded; or

(3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense that is not a petty offense.

(b) DOMESTIC VIOLENCE OFFENDERS.—A defendant who has been convicted for the first time of a domestic violence crime shall be sentenced to a term of probation if not sentenced to a term of imprisonment. The term “domestic violence crime” means a crime of violence for which the defendant may be prosecuted in a court of the United States in which the victim or intended victim is the spouse, former spouse, intimate partner, former intimate partner, child, or former child of the defendant, or any other relative of the defendant.

(c) AUTHORIZED TERMS.—The authorized terms of probation are—

(1) for a felony, not less than one nor more than five years;

(2) for a misdemeanor, not more than five years; and

(3) for an infraction, not more than one year.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1992; amended Pub. L. 99-646, §10(a), Nov. 10, 1986, 100 Stat. 3593; Pub. L. 100-182, §7, Dec. 7, 1987, 101 Stat. 1267; Pub. L. 103-322, title XXVIII, §280004, title XXXII, §320921(a), Sept. 13, 1994, 108 Stat. 2096, 2130; Pub. L. 104-294, title VI, §604(c)(1), Oct. 11, 1996, 110 Stat. 3509.)

PRIOR PROVISIONS

For a prior section 3561, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

¹So in original. Probably should not appear.

title XI, §110506, Sept. 13, 1994, 108 Stat. 2017; Pub. L. 107-273, div. B, title II, §2103(a), Nov. 2, 2002, 116 Stat. 1793.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

Section 3563(a)(4), referred to in subsec. (b)(3), probably means the par. (4) of section 3563(a) added by section 20414(b)(3) of Pub. L. 103-322, which was renumbered par. (5) by Pub. L. 104-132, title II, §203(1)(C), Apr. 24, 1996, 110 Stat. 1227.

PRIOR PROVISIONS

For a prior section 3565, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107-273 added par. (4).

1994—Subsec. (a). Pub. L. 103-322, §110506(a)(2), struck out concluding sentence which read as follows: "Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence."

Subsec. (a)(2). Pub. L. 103-322, §110506(a)(1), substituted "resentence the defendant under subchapter A" for "impose any other sentence that was available under subchapter A at the time of the initial sentencing".

Subsec. (b). Pub. L. 103-322, §110506(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(b) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of probation, the court shall, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing."

1990—Subsec. (a)(1). Pub. L. 101-647 substituted "or modifying" for "of modifying".

1988—Subsec. (a). Pub. L. 100-690, §7303(a)(2), inserted at end "Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence."

Subsecs. (b), (c). Pub. L. 100-690, §6214, added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7303(a)(2) of Pub. L. 100-690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub. L. 100-690, set out as a note under section 3563 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

§ 3566. Implementation of a sentence of probation

The implementation of a sentence of probation is governed by the provisions of subchapter A of chapter 229.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1995.)

PRIOR PROVISIONS

For prior sections 3566 to 3570, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

SUBCHAPTER C—FINES

SUBCHAPTER C—FINES¹

| Sec. | |
|-------|---|
| 3571. | Sentence of fine. |
| 3572. | Imposition of a sentence of fine and related matters. |
| 3573. | Petition of the Government for modification or remission. |
| 3574. | Implementation of a sentence of fine. |

AMENDMENTS

1994—Pub. L. 103-322, title XXXIII, §330010(3), Sept. 13, 1994, 108 Stat. 2143, transferred analysis for this subchapter to follow heading for this subchapter.

1990—Pub. L. 101-647, title XXXV, §3586(1), Nov. 29, 1990, 104 Stat. 4930, as amended, effective as of the date on which section 3586(1) of Pub. L. 101-647 took effect, by Pub. L. 103-322, title XXXIII, §330011(n), Sept. 13, 1994, 108 Stat. 2145, substituted "sentence of fine and related matters" for "sentence of fine" in item 3572.

Pub. L. 101-647, title XXXV, §3586(2), Nov. 29, 1990, 104 Stat. 4930, substituted "remission" for "revision" in item 3573.

1987—Pub. L. 100-185, §8(b), Dec. 11, 1987, 101 Stat. 1282, substituted "Petition of the Government for modification or revision" for "Modification or remission of fine" in item 3573.

§ 3571. Sentence of fine

(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) FINES FOR INDIVIDUALS.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000.

(c) FINES FOR ORGANIZATIONS.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$500,000;

¹So in original. Probably should not appear.

(4) for a misdemeanor resulting in death, not more than \$500,000;

(5) for a Class A misdemeanor that does not result in death, not more than \$200,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and

(7) for an infraction, not more than \$10,000.

(d) **ALTERNATIVE FINE BASED ON GAIN OR LOSS.**—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) **SPECIAL RULE FOR LOWER FINE SPECIFIED IN SUBSTANTIVE PROVISION.**—If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1995; amended Pub. L. 100-185, §6, Dec. 11, 1987, 101 Stat. 1280.)

PRIOR PROVISIONS

For a prior section 3571, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

1987—Pub. L. 100-185 amended section generally, revising and restating as subsecs. (a) to (e) provisions formerly contained in subsecs. (a) and (b).

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

§ 3572. Imposition of a sentence of fine and related matters

(a) **FACTORS TO BE CONSIDERED.**—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—

(1) the defendant's income, earning capacity, and financial resources;

(2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

(3) any pecuniary loss inflicted upon others as a result of the offense;

(4) whether restitution is ordered or made and the amount of such restitution;

(5) the need to deprive the defendant of illegally obtained gains from the offense;

(6) the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence;

(7) whether the defendant can pass on to consumers or other persons the expense of the fine; and

(8) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) **FINE NOT TO IMPAIR ABILITY TO MAKE RESTITUTION.**—If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, other than the United States, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

(c) **EFFECT OF FINALITY OF JUDGMENT.**—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

(1) modified or remitted under section 3573;

(2) corrected under rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified under section 3742;

a judgment that includes such a sentence is a final judgment for all other purposes.

(d) **TIME, METHOD OF PAYMENT, AND RELATED ITEMS.**—(1) A person sentenced to pay a fine or other monetary penalty, including restitution, shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. If the court provides for payment in installments, the installments shall be in equal monthly payments over the period provided by the court, unless the court establishes another schedule.

(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(e) **ALTERNATIVE SENTENCE PRECLUDED.**—At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be carried out if the fine is not paid.

(f) **RESPONSIBILITY FOR PAYMENT OF MONETARY OBLIGATION RELATING TO ORGANIZATION.**—If a sentence includes a fine, special assessment, restitution or other monetary obligation (including interest) with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

United States". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§ 191. Oaths to witnesses

The President of the Senate, the Speaker of the House of Representatives, or a chairman of any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or of a committee of the whole, or of any committee of either House of Congress, is empowered to administer oaths to witnesses in any case under their examination.

Any member of either House of Congress may administer oaths to witnesses in any matter depending in either House of Congress of which he is a Member, or any committee thereof.

(R.S. § 101; June 26, 1884, ch. 123, 23 Stat. 60; June 22, 1938, ch. 594, 52 Stat. 942, 943.)

CODIFICATION

R.S. § 101 derived from acts May 3, 1798, ch. 36, § 1, 1 Stat. 554, and Feb. 8, 1817, ch. 10, 3 Stat. 345.

R.S. § 101 constitutes first sentence, and act June 26, 1884, constitutes second sentence.

AMENDMENTS

1938—Act June 22, 1938, reenacted section without change.

§ 192. Refusal of witness to testify or produce papers

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

(R.S. § 102; June 22, 1938, ch. 594, 52 Stat. 942.)

CODIFICATION

R.S. § 102 derived from act Jan. 24, 1857, ch. 19, § 1, 11 Stat. 155.

AMENDMENTS

1938—Act June 22, 1938, reenacted section without change.

§ 193. Privilege of witnesses

No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

(R.S. § 103; June 22, 1938, ch. 594, 52 Stat. 942.)

CODIFICATION

R.S. § 103 derived from act Jan. 24, 1862, ch. 11, 12 Stat. 333.

AMENDMENTS

1938—Act June 22, 1938, reenacted section without change.

§ 194. Certification of failure to testify or produce; grand jury action

Whenever a witness summoned as mentioned in section 192 of this title fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action.

(R.S. § 104; July 13, 1936, ch. 884, 49 Stat. 2041; June 22, 1938, ch. 594, 52 Stat. 942.)

CODIFICATION

R.S. § 104 derived from act Jan. 24, 1857, ch. 19, § 3, 11 Stat. 156.

AMENDMENTS

1938—Act June 22, 1938, substituted "section 102" for "section 102 of the Revised Statutes" and inserted "or any joint committee established by a joint or concurrent resolution of the two Houses of Congress".

1936—Act July 13, 1936, substituted "section 102 of the Revised Statutes" for "section 102", inserted provisions as to failure to produce and refusal to answer, required a statement of facts constituting the failure to be reported to and filed with the President of the Senate or the Speaker of the House, and directed that said President or Speaker certify the facts to the appropriate United States attorney in lieu of prior certification to the district attorney for the District of Columbia.

§ 194a. Request by Congressional committees to officers or employees of Federal departments, agencies, etc., concerned with foreign countries or multilateral organizations for expression of views and opinions

Upon the request of a committee of either House of Congress, a joint committee of Congress, or a member of such committee, any officer or employee of the Department of State, the Agency for International Development, or any other department, agency, or independent establishment of the United States Government primarily concerned with matters relating to foreign countries or multilateral organizations may express his views and opinions, and make recommendations he considers appropriate, if the request of the committee or member of the committee relates to a subject which is within the jurisdiction of that committee.

(Pub. L. 92-352, title V, §502, July 13, 1972, 86 Stat. 496; Pub. L. 93-126, §17, Oct. 18, 1973, 87 Stat. 455; Pub. L. 105-277, div. G, subdiv. A, title XII, §1225(g), title XIII, §1335(n), Oct. 21, 1998, 112 Stat. 2681-775, 2681-789.)

AMENDMENTS

1998—Pub. L. 105-277, §1335(n), struck out “the United States Information Agency,” after “Department of State.”

Pub. L. 105-277, §1225(g), struck out “the United States Arms Control and Disarmament Agency,” after “International Development.”

1973—Pub. L. 93-126 substituted “or employee of” for “appointed by the President, by and with the advice and consent of the Senate, to a position in”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 1225(g) of Pub. L. 105-277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of Title 22, Foreign Relations and Intercourse.

Amendment by section 1335(n) of Pub. L. 105-277 effective Oct. 1, 1999, see section 1301 of Pub. L. 105-277, set out as an Effective Date note under section 6531 of Title 22, Foreign Relations and Intercourse.

§ 194b. Omitted

CODIFICATION

Section, Pub. L. 100-418, title V, §5421, Aug. 23, 1988, 102 Stat. 1468, which directed President or head of appropriate department or agency to include in every recommendation or report made to Congress on legislation which might affect ability of United States firms to compete in domestic and international commerce a statement of impact of such legislation on international trade and public interest and ability of United States firms engaged in the manufacture, sale, distribution, or provision of goods or services to compete in foreign or domestic markets, ceased to be effective six years from Aug. 23, 1988, pursuant to subsec. (c) of section.

§ 195. Fees of witnesses in District of Columbia

Witnesses residing in the District of Columbia and not in the service of the government of said District or of the United States, who shall be summoned to give testimony before any committee of the House of Representatives, shall not be allowed exceeding \$2 for each day's attendance before said committee.

(May 1, 1876, ch. 88, 19 Stat. 41.)

HOUSE RULE ON PAY OF WITNESSES

Rule XI, clause 5, Rules of the House of Representatives, provides that: “Witnesses appearing before the House or any of its committees shall be paid the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, Delegates, the Resident Commissioner, and employees of the House, plus actual expenses of travel to or from the place of examination. Such per diem may not be paid when a witness has been summoned at the place of examination.”

§ 195a. Restriction on payment of witness fees or travel and subsistence expenses to persons subpoenaed by Congressional committees

No part of any appropriation disbursed by the Secretary of the Senate shall be available on and after July 12, 1960, for the payment to any person, at the time of the service upon him of a subpoena requiring his attendance at any inquiry or hearing conducted by any committee of the

Congress or of the Senate or any subcommittee of any such committee, of any witness fee or any sum of money as an advance payment of any travel or subsistence expense which may be incurred by such person in responding to that subpoena.

(Pub. L. 86-628, July 12, 1960, 74 Stat. 449.)

§ 195b. Fees for witnesses requested to appear before Majority Policy Committee or Minority Policy Committee

Any witness requested to appear before the Majority Policy Committee or the Minority Policy Committee shall be entitled to a witness fee for each full day spent in traveling to and from the place at which he is to appear, and reimbursement of actual and necessary transportation expenses incurred in traveling to and from that place, at rates not to exceed those rates paid witnesses appearing before committees of the Senate.

(Pub. L. 93-371, §7, Aug. 13, 1974, 88 Stat. 431.)

§ 196. Senate resolutions for investigations; limit of cost

Senate resolutions providing for inquiries and investigations shall contain a limit of cost of such investigation, which limit shall not be exceeded except by vote of the Senate authorizing additional amounts.

(Mar. 3, 1926, ch. 44, §1, 44 Stat. 162.)

§ 197. Compensation of employees

The rate of compensation for any position under the appropriations now available for, or hereafter made for, expenses of inquiries and investigations of the Senate or expenses of special and select committees of the House of Representatives shall not exceed the rates fixed under chapter 51 and subchapter III of chapter 53 of title 5, for positions with comparable duties; and the salary limitations of \$3,600 attached to appropriations heretofore made for expenses of inquiries and investigations of the Senate or for expenses of special and select committees of the House of Representatives are repealed.

(Feb. 9, 1937, ch. 9, title I, §1, 50 Stat. 9; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972.)

CODIFICATION

“Chapter 51 and subchapter III of chapter 53 of title 5” substituted in text for “the Classification Act of 1949” on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted “Classification Act of 1949” for “Classification Act of 1923”.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

§ 198. Adjournment

(a) Unless otherwise provided by the Congress, the two Houses shall—

(1) adjourn sine die not later than July 31 of each year; or