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
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September 21, 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

This afternoon, Chairman Blackburn of the Select Investigative Panel on Infant Lives plans to convene a business meeting to consider a resolution and draft report that charges StemExpress, as well as its founder and Chief Executive Officer Cate Dyer, with criminal contempt.[1]

The Select Panel does not have the authority to take such action, and therefore I am requesting that you immediately intervene and demand that Select Panel Chair Blackburn withdraw her request for a contempt vote. The House Resolution that created the Select Panel did not give it power to bring contempt charges or to issue any contempt reports. Furthermore, the rules of the House only allow full committees to consider and approve contempt resolutions; the Select Panel is a sub-entity of the full House Energy and Commerce Committee, and as such it lacks independent contempt or legislative making authority.[2] Therefore, it is clear that Chairman Blackburn does not have the authority to proceed with today's vote, and no action on contempt can be taken without consideration of the full House Energy and Commerce Committee.

I am also deeply concerned by the manner in which this investigation has been prosecuted to date, and by the flimsy basis on which the grounds for contempt charges have been obtained by the Select Panel's Chairman. The decision to recommend contempt against StemExpress, which sets a higher threshold of witness non-cooperation before our Committee

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[1] In a letter from Chair Blackburn to StemExpress, dated September 8, 2016, she lists actions taken by the Panel in investigating StemExpress's business practices, including its issuance of two document production subpoenas to the company. (See Attached Letter)

[2] Wm. Holmes Brown, Charles W. Johnson, John V. Sullivan, A Guide to the Rules, Precedents, and Procedures of the House at House Practice Manual at 427 ("A contempt citation must be reported to the House pursuant to formal action by the committee.")

has proceeded historically to file contempt, marks a sharp and substantial departure from well-established Committee precedent.[3] In addition, unprecedented and heavy-handed enforcement actions such as these are at complete odds with how our Committee traditionally addresses investigative matters.

For months, the Select Panel has engaged in a witch hunt against companies nationwide who conduct vital fetal tissue research that plays an instrumental role in finding cures and treatments for diseases like diabetes, Alzheimer's, and multiple sclerosis. Such strong arm tactics have caused companies like StemExpress to either reduce their exposure to this type of groundbreaking work, or to exit the sector altogether.

As we continue our discussions to find a path to passing a final 21st Century Cures bill, the McCarthyesque actions this Select Panel is taking on a daily basis undermine the type of biological research that the bill strives to promote. Sick patients are in dire need now more than ever of potentially lifesaving medicines and treatments to combat the rarest diseases to the most wide-sweeping pandemics.[4] Our Committee and its members do not improve or promote the health of the patients of today or tomorrow by intimidating, harassing and bullying companies or forcing them out of business.[5]

This campaign of harassment and intimidation must come to an immediate end. I would urge you to address this matter now before additional damage is done, and before this Select Panel is allowed to take action in an area where it has absolutely no authority.

Sincerely,

Frank Pallone, Jr.
Ranking Member

Attachment

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[3] *See, e.g., id.* at 426; *see also* H. Rept. 106-527 – Contempt of Congress Against Dr. Miles Jones.

[4] Danielle Paquette, "*'We lose money doing this': Tiny company caught in abortion debate takes on Congress*," Washington Post, (May 27, 2016) (www.washingtonpost.com/news/wonk/wp/2016/05/27/critics-say-theyre-selling-baby-body-parts-they-say-theyre-saving-lives/).

[5] *See id.* (Researchers are reporting that promising studies and clinical trials for neurological conditions, such as multiple sclerosis (MS) and Alzheimer's disease, have been halted or delayed due to the reduced availability of fetal tissue for research.)