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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

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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

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1 Director; Rachel Collins, Minority Investigative Counsel and
2 Clerk; Chuck Flint, Minority Legislative Director (Congressman
3 Blackburn); Mary Harned, Minority Investigative Counsel; Pierre
4 Kamga, Minority Detailee - GAO; Mike Reynard, Minority
5 Communications Director; Frank Scaturro, Minority Special
6 Counsel; and Matthew Tallmer, Minority Investigator.

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1 Mrs. Blackburn. The Select Investigative Panel will come
2 to order. And before we begin, I would like to take a moment to
3 address the guests who are in our audience today.

4 First of all, we thank each of you for taking the time to
5 come. We think that engaged citizens are a welcome and valuable
6 part of the political process. I only wish every hearing drew
7 the amount of interest that this hearing has drawn.

8 For the purpose of this hearing, we are going to be examining
9 the pricing of fetal tissue. It is an opportunity for the Select
10 Investigative Panel to ask questions and have a thoughtful
11 discussion. The number of people in the audience this morning
12 demonstrates the strong interest in the topic and we welcome you.

13 I do want to remind our guests in the audience that the chair
14 is obligated under the rules of the House and the rules of the
15 committee to maintain order and preserve decorum in the committee
16 room. And I know that we all have deep feelings on the issue,
17 but we appreciate the audience's cooperation in maintaining order
18 as we have a full discussion that we would like to have this morning
19 on this important issue.

20 I also want to welcome each of our witnesses who are here
21 today. And at this time, I am going to yield myself 10 minutes
22 for an opening statement.

23 Ms. Black. Madam Chair?

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1 Mrs. Blackburn. The gentlelady is recognized.

2 Ms. Black. Thank you, Madam Chair. Regretfully, I need to
3 bring up an issue regarding to the packet of materials, the
4 so-called exhibits, that was provided to your staff yesterday
5 before the opening statements. And the reason is because we have
6 just received your opening statement, which was released to the
7 press.

8 I just saw it for the first time, and in your opening
9 statement you make extensive reference to this package of
10 so-called exhibits. And so before you make your opening
11 statements, maybe we can resolve the issues. Otherwise, we are
12 going to even have to object to the documents referenced in your
13 opening statement.

14 And if I may, Madam Chair, I will go over what our issues
15 are with those so-called exhibits. Your staff told us that you
16 and other Republican members intended to use these materials to
17 question witnesses today, and it is my understanding that these
18 documents have been given to the witnesses. In fact, several of
19 the witnesses mentioned the documents in their written
20 statements.

21 Now, I reviewed the documents yesterday. Some of them were
22 created wholesale by Republican staff. There was no explanation
23 of the underlying factual foundation for those materials, the

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1 methodology that was used in coming up with these charts, or some
2 of the graphs that we had and, frankly, I believe them to be
3 misleading and, moreover, the conclusions that are drawn and,
4 frankly, stated as fact in the staff-created annotated index are
5 false.

6 There were other documents that were sourced to a
7 "procurement business" which also have nothing to do with the
8 topic of this hearing, although they were presented as if they
9 did. They don't distinguish between the various services of the
10 company, which provides a variety of different specimens,
11 including adult blood and bone marrow for use in biomedical
12 research.

13 Now, just to add to this, Madam Chair, yesterday the company
14 who we believe these so-called exhibits came from, StemExpress,
15 sent a letter to you and a copy to us about the serious, serious
16 problems with these so-called exhibits. I would ask unanimous
17 consent to put that into the record.

18 But I guess my point is, I am concerned because the so-called
19 exhibits, I don't think they are really designed to find the facts
20 about fetal tissue research. If they were, we would have called
21 StemExpress in, or we would have taken depositions. And I don't
22 believe that they are germane as required by Rule 16, Clause 7
23 of the House, because they don't reflect credibility or -- but,

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1 instead, they cast dishonor on the House.

2 But, you know, in addition, I just may, because we just got
3 these exhibits yesterday and then we got the letter from
4 StemExpress, it has really -- it also raises troubling questions
5 about where this material came from. If you look at StemExpress'
6 letter -- and I hope you have read it, Madam Chair, what it says
7 is that -- what StemExpress is saying is they believe that the
8 Panel may have received material directly from Mr. David Daleiden
9 that have not been authenticated and that were obtained by Mr.
10 Daleiden unlawfully.

11 This is part of the whole issue of the investigation in Texas,
12 and some of these even may have been created by Mr. Daleiden
13 himself. And what the company did was they asked that we withdraw
14 these documents until the general counsel of the House of
15 Representatives, Kerry W. Kircher, has an opportunity to review
16 them and approve their list.

17 And so, Madam Chair, given the concerns about the factual
18 foundations of these exhibits, and also given the further concern
19 about how they were created, what they are saying, I would just
20 ask if we could withdraw these exhibits until these things are
21 figured out.

22 Mrs. Blackburn. I thank the gentlelady for her inquiry.
23 Yes, we were in receipt of the letter. I don't know anything about

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1 the attorney or how truthful their letter is. We do intend and
2 will accept -- I accept your request, and we will UC that letter
3 into the record for the hearing today.

4 The documents, let me speak to that for a moment. The
5 documents have all been obtained through our regular
6 investigatory work. We have had things that have come to us from
7 whistleblowers, from subpoenas from former employees, citizens
8 that have filed FOIA requests, the Panel's whistleblower portal,
9 as I said, and also an internet search archive search engine. And
10 that is the way these documents have come to us.

11 So the documents that we are going to use for the hearing,
12 or the documents that we intend to use for the hearing, we will,
13 accepting UC the letter into the record. And when --

14 Ms. Black. But, Madam Chair, may I make a farther
15 parliamentary --

16 Mrs. Blackburn. Parliamentary inquiry. Go ahead.

17 Ms. Black. Madam Chair, you had just stated that all of the
18 documents that formed the basis of these exhibits were received
19 from a variety of sources by the committee, including
20 whistleblowers. Have all of those documents and their sources
21 been provided to the minority staff of this committee?

22 Mrs. Blackburn. We have provided documents to the minority
23 staff.

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1 Ms. Black. Have you provided all of the documents, Madam
2 Chair, that you refer to that were used as the foundation for these
3 exhibits?

4 Mrs. Blackburn. I think all of those documents have been
5 provided to you, and then you all leaked -- you have staff that
6 leaked the documents to one of the entities.

7 Ms. Black. Okay. So they have all been -- okay. Madam
8 Chair, I would ask a further parliamentary inquiry then. Before
9 we continue then, might I be asked to inquire of the appropriate
10 staff member of the foundational basis for these exhibits,
11 particularly Exhibit B1, B2, some of those there is a chart,
12 Exhibit B4, which you intend to use.

13 There is an Exhibit B6, an excerpt of a draft contract between
14 the PB and abortion trade association, which appears to have been
15 created by staff. I would like to be able to ask the staff how
16 these documents were created and what --

17 Mrs. Blackburn. What do you mean by "foundational basis"?

18 Ms. Black. Well, for example, Madam Chair, if you take a
19 look at Exhibit B1, so Exhibit B1, Madam Chair, appears to be a
20 chart, and it has three boxes -- abortion clinic, procurement
21 business, researcher, and between the three boxes there are dollar
22 signs and arrows going back and forth, there are questions, and
23 so on.

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1 I don't know what information this is based on. I don't know
2 -- I would like to know how this was created. Or if you look at
3 Exhibit B2, for example, Exhibit B2 is some document. It doesn't
4 say where it is from. It appears to have been taken from some
5 website, but this is one of the documents that StemExpress is
6 saying that they think might have been taken from -- not from their
7 company but from someplace else and not talking about fetal
8 tissue. But I don't know where that comes from.

9 The exhibit is not identified where it comes from, but I
10 suspect that the witnesses today and the majority intend to
11 somehow try to use this to talk about the so-called sale of fetal
12 tissue.

13 Exhibit 3 is just, again, something taken off a website. We
14 don't know the source of that. Exhibit 4 appears to be a bar
15 graph, and what it says is procurement business clinic growth
16 strategy, number of partnerships with abortion clinics, then it
17 has got a bar graph.

18 Then Exhibit 5, B5, procurement business revenue growth,
19 then it has got another bar graph, but we don't know who made those
20 bar charts, and we don't know where that information came from.
21 So if you or the witnesses are relying on this, this is being
22 presented as if it is a fact, but in fact it is not.

23 And then B6, this is one that particularly disturbs me. It

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1 says in parentheses "excerpt of a draft contract between the PB
2 and the abortion" --

3 Mrs. Blackburn. If the gentlelady will yield?

4 Ms. Black. Sure.

5 Mrs. Blackburn. Okay. The B1 graph that you are
6 referencing was created by staff for discussion purposes. It is
7 created by material that has been submitted to us, to the
8 committee. And so the document B1 exhibit that you are going to
9 is something, again, that was submitted to us, and B4 is something
10 created by staff from material that has been submitted.

11 Now, does the gentlelady have a motion?

12 Ms. Black. Yes. Just to finish my statement, Madam Chair,
13 that is my concern. I would like to be able to question the staff
14 member who created all of these documents. I assume --

15 Mrs. Blackburn. They are created for discussion, and if you
16 would like to include in your questioning in your time discussion
17 about that that is fine.

18 Ms. Black. Well, Madam Chair, I think that these exhibits
19 were created from whole cloth. And if you won't let me find out
20 what the basis for these are, then I object to the use of any --

21 Mrs. Blackburn. I would --

22 Ms. Black. -- of these exhibits --

23 Mrs. Blackburn. I would --

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1 Ms. Black. -- and I --

2 Mrs. Blackburn. -- the gentlelady that information has
3 been submitted to us.

4 Ms. Black. And I would make a point of order that these
5 materials are against Rule 16, Clause 7 of the House, and I would
6 ask for their exclusion.

7 Mr. Duffy. Madam Chair, I move to table the point of order.

8 Mrs. Blackburn. The gentlelady's motion has been --

9 Ms. Black. Madam Chair, I appeal the ruling of the chair.

10 Mrs. Blackburn. The gentlelady's motion has been made, and
11 the motion is tabled.

12 Ms. Black. Madam Chair, I appeal the ruling of the chair.
13 That was the motion I just made, Madam Chair.

14 Mrs. Blackburn. You made the motion to exclude.

15 Ms. Black. No. And then he moved --

16 Mrs. Blackburn. The motion to --

17 Ms. Black. -- to table it, and then I moved to appeal, and
18 then you ruled -- you moved to table it, and I moved to appeal
19 it.

20 Mrs. Blackburn. We will rule on the motion to table first.

21 Ms. Black. Yes.

22 Mrs. Blackburn. Okay. And the motion is tabled.

23 Ms. Black. I appeal the ruling of the chair.

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1 Mrs. Blackburn. And the appeal --

2 Ms. Black. And I ask for a recorded vote.

3 Mrs. Blackburn. And the appeal is denied. We will have the
4 clerk call the roll on the -- for the recorded vote on the motion
5 to appeal.

6 The Clerk. Mr. Pitts?

7 Mr. Pitts. Yes.

8 The Clerk. Mr. Pitts says aye.

9 Ms. Black?

10 Ms. Black. Yes.

11 The Clerk. Mr. Pitts says aye. Ms. Black says aye.

12 Mr. Bucshon?

13 Mr. Bucshon. Yes.

14 The Clerk. Mr. Bucshon says aye.

15 Mr. Duffy?

16 Mr. Duffy. Aye.

17 The Clerk. Mr. Duffy says aye.

18 Mr. Harris?

19 Mr. Harris. Aye.

20 The Clerk. Mr. Harris says aye.

21 Mrs. Hartzler?

22 Mrs. Hartzler. Aye.

23 The Clerk. Mrs. Hartzler says aye.

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1 Mrs. Love?

2 Mrs. Love. Aye.

3 The Clerk. Mrs. Love says aye.

4 Ms. Schakowsky?

5 Ms. Schakowsky. No.

6 The Clerk. Ms. Schakowsky says nay.

7 Mr. Nadler?

8 [No response.]

9 Ms. DeGette?

10 Ms. DeGette. No.

11 The Clerk. Ms. DeGette says nay.

12 Ms. Speier?

13 Ms. Speier. No.

14 The Clerk. Ms. Speier says nay.

15 Ms. DelBene?

16 Ms. DelBene. No.

17 The Clerk. Ms. DelBene says nay.

18 Mrs. Watson Colman?

19 Mrs. Watson Colman. No.

20 The Clerk. Ms. Watson Colman says nay.

21 Madam Chair?

22 Mrs. Blackburn. Aye.

23 The Clerk. Madam Chair says aye.

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1 Mrs. Blackburn. The clerk will report the tally.

2 The Clerk. Chairman Blackburn, on the vote there were 8 ayes
3 and 5 nays.

4 Mrs. Blackburn. The motion to exclude is tabled.

5 At this time, I will begin the opening statement, and we will
6 then move to our first panel of witnesses who have come to --

7 Ms. Schakowsky. Madam Chair, may I? I really want to ask
8 at this point that your words be taken down regarding the assertion
9 that staff "leaked documents to the entity," actually to
10 StemExpress. These documents had already been given to witnesses
11 and the press, and then were posted to your website. And so I
12 think your words need to be taken down. Accusing our staff of
13 leaking that is not true, and those words should be taken down.

14 Mr. Duffy. Madam Chair?

15 Mrs. Blackburn. Ms. Schakowsky, the staff had asked for the
16 documents. They were shared -- this was shared before they went
17 to the website, and then they were released to the entity. And
18 in order to take the comments down, the comments have to be
19 personal in nature.

20 So with that, let's begin with our opening statements, and
21 then we will receive our first panel of witnesses.

22 As I was beginning earlier, I want to welcome all of our
23 witnesses who are here today. I am going to introduce each of

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1 you later as we move forward with our testimony on the pricing
2 of fetal tissue.

3 As part of my opening statement, I will present a narrative
4 about the exhibits that today's hearing will discuss. I have said
5 many times my hope is that both parties can work together on some
6 things, and today's subject matter should be an opportunity to
7 do so for a couple of reasons. First, at our initial hearing on
8 bioethics and fetal tissue, all witnesses from both sides agreed
9 that no one should profit from the sale of baby body parts.
10 Nobody.

11 Second, the Democrats overwhelmingly supported a prohibition
12 on profiting from fetal tissue sales during the 1993 passage of
13 the National Institutes of Health Revitalization Act. Former
14 Congressman Dingell passed this legislation out of the Energy and
15 Commerce Committee, and former Congressman Henry Waxman amended
16 the NIH bill on the floor to make clear that profiting from the
17 sale of baby body parts was a crime.

18 Folks, these two Democrat leaders took the offense so
19 seriously that they made profiting from the sale of fetal tissue
20 punishable by a 10-year felony. They understood that unborn
21 children do indeed have constitutional rights.

22 Now, there has been a lot of heated debate about the horrible
23 videos that came out last year, but today's hearing will present

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1 business documents, invoices, marketing brochures, and
2 management documents that reveal that one for-profit procurement
3 business and several abortion clinics may have violated the intent
4 of the statute. And the Waxman prohibition passed overwhelmingly
5 by a Democrat-controlled House.

6 We have invited former U.S. attorneys and others to help us
7 understand this conduct in light of the existing statute. We look
8 forward to working through this material in a thoughtful way, and
9 I ask my colleagues on the other side to join in a productive
10 discussion about the statute that your side passed.

11 Before I turn to introducing the documents, I want to call
12 your attention to five posters that will help to visually follow
13 the discussion. The first chart presents three entities involved
14 in the business of selling the body parts. That chart depicts
15 that the middleman, the procurement business, pays the abortion
16 clinic for fetal tissue and is then paid by the researcher or the
17 customer.

18 The second chart is a website screen grab from the
19 procurement business of how to buy baby body parts online. Now,
20 there is a new website, and the baby body parts procurement
21 business has been spun off to a new entity. That chart shows the
22 dropdown box for every part imaginable -- heart, eyes, scalp,
23 liver, hands. Then you click on the next box and you pick the

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1 gestation period. Then you click and proceed to checkout to
2 select your form of shipping. The third chart shows the daily
3 tasks performed by the procurement business employee inside the
4 abortion clinic.

5 Once the order is communicated, the procurement tech starts
6 her work checking gestation periods, getting consent, procuring
7 tissue, and sending to the customer. These are clear HIPAA
8 violations. Our Democratic colleagues have voiced concerns over
9 privacy throughout the investigation.

10 I would hope, at a minimum, they will join us in condemning
11 obvious violations of HIPAA, which was signed into law by
12 President Clinton on August 21, 1996. The fourth chart
13 summarizes several sample actual payments from the procurement
14 business to the abortion clinic and from the customer to the
15 procurement business. These are just samples for discussion
16 today. They do not present the entire financial picture. And
17 the fifth chart shows who bears the responsibility for the
18 reasonable cost involved in the procurement and sale.

19 Next, I want to walk the witnesses through the exhibits. I
20 know that all the lawyers in the room like to focus on every detail,
21 and that is why you are here. But it is also important to
22 understand the big picture of what the procurement business was
23 trying to do, especially in light of the Waxman prohibitions

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1 against profiting from the sale of baby parts in the '93 NIH
2 Revitalization Act.

3 Please turn to the B exhibits beginning with B2. This is
4 the procurement company brochure that is handed out at national
5 conferences where abortion clinic managers were in attendance.
6 Notice it says financially profitable, fiscally rewards,
7 financial benefit to your clinic.

8 Look at Exhibit B3, which is a website screen grab of the
9 procurement business, once again, financially profitable, while
10 also providing a financial benefit to your own clinic.
11 Evidently, the procurement business is not familiar with the
12 Waxman prohibition.

13 Now, turn the page and look at Exhibits B4 and 5. The
14 procurement business started in 2010 with three clinics. Two
15 years, it was up to 30, and in two more years it had nearly 100.
16 Further, they were negotiating a contract to have over 250 clinics
17 by this year, but the co-marketing negotiations with the national
18 abortion trade organization fell apart just about the time the
19 videos came out last year.

20 Now, you do not have to be a lawyer to see what is going on
21 here. You put up a website that offers the parts imaginable, and
22 why on earth would anybody ever need a baby scalp? Then you pick
23 the gestation period and you check out. To offer that service

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1 you need abortion clinics, a lot of abortion clinics. So you grow
2 your number of clinics, and you offer the clinics money to sign
3 up. You offer them financial benefit to join.

4 You tell the clinic that you will do all of the work, all
5 of the items on the chart that show the workflow of the procurement
6 technician. This does not sound to me like tissue donations for
7 research. This sounds like someone who wants to make money, a
8 lot of money, selling the baby body parts.

9 So I thank our witnesses for their generous time today. I
10 welcome them. And at this time, I yield 10 minutes to Ms.
11 Schakowsky.

12 [The prepared statement of Mrs. Blackburn follows:]

13

14 *****INSERT 1*****

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1 Ms. Schakowsky. From the outset, this investigation has not
2 been an objective or fact-based search for the truth, but a
3 political weapon to attack women's health care and lifesaving
4 research and harass and intimidate those who provide these
5 services. This was clear during our first hearing where one of
6 the witnesses invited by the Republicans drew a comparison between
7 researchers who use fetal tissue and Nazi war criminal Dr. Josef
8 Mengele, a comparison echoed by Chair Blackburn in her opening
9 statement.

10 Another Republican witness testified that women who have
11 abortions are "morally disqualified" from choosing to donate
12 tissue for research purposes. For today's hearing, Republicans
13 have again invited witnesses who believe that abortion should be
14 illegal, that women should not be permitted or trusted to decide
15 whether to carry a pregnancy to term. Some continue to decline
16 that Planned Parenthood is selling fetal tissue, as you just
17 heard, for profit, despite the fact that three House committees,
18 12 states, and a Texas grand jury have already cleared the
19 organization of wrongdoing.

20 These witnesses, like our Republican colleagues, endorse and
21 rely upon the video allegations of anti-abortion extremists,
22 David Daleiden, and his associates to support their inflammatory
23 claims. Anyone who has been following the facts knows the truth.

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1 Mr. Daleiden's videos are not accurate or reliable, and they do
2 not show the unlawful sale of fetal tissue, and we will argue today
3 that the so-called exhibits do not make that case either.

4 A grand jury in Texas already put Mr. Daleiden to the test
5 under oath and he failed. That grand jury, instructed by the
6 Republican Lieutenant Governor to investigate Planned
7 Parenthood, instead indicted Daleiden for breaking the law
8 through his efforts to entrap Planned Parenthood.

9 The district attorney handling the case refused to represent
10 it to another grand jury, explaining that "we must go where the
11 evidence leads us." And then she explained, and I quote, "Anyone
12 who pays attention knows that I am pro-life. I believe abortion
13 is wrong, but my personal belief does not relieve me of my
14 obligation to follow the law." That standard should apply with
15 equal force here.

16 There is no reason to believe that Daleiden, a proven liar
17 when it comes to Planned Parenthood, would be any more truthful
18 about anyone else involved in reproductive health care or fetal
19 tissue research, yet instead of correcting the record on the
20 Daleiden videos, the chair continues to invoke them.

21 Today my Republican colleagues likely will claim that it is
22 not just the videos, actually. She has claimed -- the chair has
23 already claimed that. They may assert that documents that this

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1 Panel has received or that Republican staff have created show the
2 need for further investigation, and this is also false.

3 Sixteen years ago, the Subcommittee on Health and
4 Environment of the House Commerce Committee considered similar
5 materials -- 16 years ago -- that hearing titled "Fetal Tissue:
6 Is it Being Sold in Violation of Federal Law?" featured a "fee
7 for service schedule" showing amounts charged for types of tissue,
8 "transaction logs," with charges for tissue on particular dates
9 and agreements between providers and procurement organizations.

10 And that hearing also featured an employee, Dean Alberti,
11 who had worked at two tissue procurement organizations. The
12 anti-abortion group "Life Dynamics" had filmed and released a
13 video interview where -- is it Alberti? Alberti claimed to have
14 witnessed fetuses "born alive," doctors changing procedures for
15 donation purposes, and unlawful payment for fetal tissue, exactly
16 the types of claims made in the Daleiden video.

17 In statements under oath, however, Alberti contradicted his
18 inflammatory claims and admitted during the 2000 hearing that his
19 sworn statements, not the remarks on the heavily edited video made
20 by anti-abortion extremists, were the truth. The Department of
21 Justice also investigated the allegations of unlawful
22 profiteering that was at the heart of that hearing and concluded
23 that no laws had been broken.

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1 No one believes that companies should be allowed to profit
2 by selling fetal tissue, and we firmly support the prohibition.
3 However, just as it does for adult organ donation, the law
4 expressly allows reimbursement for cost. In fact, 42 U.S.C.
5 289g, the provision that we are focusing on today, is modeled on
6 the National Organ Transplant Act, which similarly prohibits
7 "valuable consideration" but allows reimbursement for costs
8 associated with organ donations which can be considerable.

9 Allegations regarding possible unlawful profit from adult
10 organ transplantation would not result in a call to ban all organ
11 donations, yet Republican lawmakers in the House want to ban fetal
12 tissue donation and research altogether, something that some
13 states have already done. Florida, for example, recently enacted
14 a sweeping bill attacking women's health care and banning the
15 donation of fetal tissue.

16 This is tragic for women and families on the Gulf Coast as
17 summer approaches and researchers race to understand and solve
18 the Zika Virus. Despite Chair Blackburn's claim that Democrats
19 are exaggerating, she says, its importance, key studies have
20 relied heavily on fetal tissue to increase our understanding of
21 the Zika Virus.

22 These bans have been proposed despite the fact that there
23 still is no evidence of wrongdoing related to fetal tissue

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1 donation. Instead, the documents received by this Panel actually
2 show that health care providers are losing money through programs
3 that allow women to donate fetal tissue for research purposes.

4 This was not what Congress intended when it voted on a
5 bipartisan basis to allow reimbursement of costs. It is absurd
6 that even when they are losing money, providers are still attacked
7 by those who appear to be motivated by their opposition to
8 abortion, not the actual facts regarding fetal tissue donation.
9 This Panel is a perfect example.

10 Over the course of the investigation, the chair has targeted
11 one clinic, one university, and one tissue procurement
12 organization, all of whom were cooperating voluntarily before the
13 chair served them with unilateral subpoenas. The Panel has known
14 since January that Southwestern Women's Options does not take any
15 money for ensuring that women who want to donate tissue to the
16 university can do so. And let me underscore that fact: no money
17 is exchanged in connection with a woman's choice to donate fetal
18 tissue to researchers at the University of New Mexico.

19 Already knowing this, the chair served subpoenas and issued
20 press releases tying them to what she repeatedly described as an
21 investigation into the unlawful sale of baby body parts, words
22 we heard today.

23 As a result, the university and clinic have been subject to

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1 unwarranted accusations from state and federal officials on
2 additional targeted harassment from anti-abortion extremists.
3 Is it any wonder that universities, clinics, and others are
4 reluctant to hand over the names of their researchers, students,
5 clinic personnel, and doctors, so that the chair can amass a
6 dangerous database of their names?

7 For its part, the tissue procurement company StemExpress
8 already offered to have its procurement director explain its cost
9 structure. The chair ignored that offer and instead called this
10 public hearing and invited witnesses who have no firsthand
11 knowledge of the facts to opine about potential criminal
12 misconduct.

13 On its own initiative, StemExpress has now submitted a letter
14 to ensure that the Panel has the information needed to bring this
15 investigation to an end. This investigation has never been, and
16 has no promise of becoming, fair or fact-based. Our Republicans
17 colleagues' disdain for the facts and for women and their doctors
18 is putting researchers, doctors, and women at risk. It is time
19 for Republican leadership to bring this investigation to an end.

20 I ask unanimous consent to have the April 18 letter from
21 StemExpress included as part of the record for this hearing and
22 yield back the balance of my time.

23 Mrs. Blackburn. The gentlelady yields back. On her UC

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1 request, we had already agreed to put that into the record.

2 At this time, I want to welcome our first panel. Senator
3 Jeanne Shaheen is a U.S. Senator from New Hampshire. She is the
4 only woman in U.S. history to be elected both a governor and a
5 U.S. Senator. Senator --

6 Ms. Schakowsky. Excuse me. Can I just say the letter I
7 wanted inserted in the record is a different letter that we
8 received from her yesterday, so if you could --

9 Mrs. Blackburn. So moved.

10 Ms. Schakowsky. Okay.

11 Mrs. Blackburn. So moved.

12 Ms. Schakowsky. Sorry.

13 Mrs. Blackburn. Senator Shaheen has served in the U.S.
14 Senate since '09 and is a member of the Senate Committees on Armed
15 Services, Foreign Relations, Appropriations, and is ranking
16 member of the Small Business and Entrepreneurship Committee.

17 Senator Shaheen is a former small business owner and formerly
18 served as the Director of Harvard University's Institute of
19 Politics at the Kennedy School of Government. Welcome.

20 Senator Ben Sasse is a U.S. Senator from Nebraska. Senator
21 Sasse comes to the Senate having spent the last five years as a
22 college president, one of the youngest in the nation. During the
23 first and second terms of President George W. Bush, he worked in

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1 the Department of Justice and the Department of Homeland Security
2 before becoming Assistant Secretary for Planning and Evaluation
3 at the U.S. Department of Health and Human Services. Welcome to
4 you, Senator Sasse.

5 At this time, we will begin with Senator Shaheen for your
6 five-minute remarks, and we welcome you.

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1 STATEMENT OF HON. JEANNE SHAHEEN, A UNITED STATE SENATOR FROM THE
2 STATE OF NEW HAMPSHIRE

3

4 Senator Shaheen. Thank you very much, Chairwoman Blackburn
5 and Ranking Member Schakowsky, members of the committee. I very
6 much appreciate the opportunity to appear before you this morning,
7 but I do so with great concern. I know you will hear from my
8 colleague, Senator Sasse from Nebraska, and I respect his deeply
9 held personal beliefs.

10 But if we want to have a civil discussion on this issue, we
11 should begin with the facts. Already news articles today have
12 called into question the validity of the exhibits that will be
13 presented to the Panel. This committee's very existence was
14 founded on the basis of highly deceptive edited videos. These
15 videos have since been proven to be misleading and false by
16 multiple independent investigations across the country.

17 In January, after thorough investigations into the videos,
18 a Texas grand jury cleared Planned Parenthood of any wrongdoing
19 and indicted the individuals responsible for their creation. In
20 fact, 12 other states have also cleared Planned Parenthood of any
21 wrongdoing, and 8 additional states have declined to investigate,
22 citing a lack of evidence.

23 I believe it is now time for the special investigations to

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1 end. And I would also like to point out that fetal tissue research
2 has long had bipartisan support. In 1993, Congress passed the
3 National Institutes of Health Revitalization Act, which permits
4 fetal tissue research. That bill passed with overwhelming
5 support, 94 to 4 in the Senate, and 290 to 130 in the House.

6 And I think it is important to note that that bill was passed
7 on recommendations of a Blue Ribbon Panel convened under President
8 Reagan, which was tasked with studying the ethics of fetal tissue
9 research. Millions of people have benefitted from fetal tissue
10 research. Vaccines for polio and rubella were developed as a
11 result of research done on fetal tissue, and research on health
12 issues that touch so many of us -- Parkinson's disease, diabetes,
13 HIV/AIDS, eye disorders and spinal cord injuries -- have also
14 benefitted from the 1993 law.

15 If it is the Panel's desire to change the law, obviously you,
16 as legislators, are able to do that. But I believe it would be
17 a grave error. Sadly, it is my belief that this Panel was formed
18 with political motivations. There is very little real interest
19 in an unbiased investigation to uncover facts related to women's
20 health or research. Instead, I believe that this Panel serves
21 as an opportunity for some to once again attack the health care
22 providers who millions of women and families depend on.

23 In February, I joined with colleagues in both chambers to

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1 ask House and Senate leadership to disband this Panel and all other
2 Congressional investigations that would undermine women's access
3 to health care. Not only do I believe that this Panel is an
4 inappropriate and wasteful misuse of federal resources, but I am
5 gravely concerned that it also puts researchers, providers, and
6 patients across the country at risk.

7 Unfortunately, as a result of the political rhetoric
8 surrounding this issue, we have seen violent acts and threats
9 against women health providers and researchers across the
10 country. And I am very sad to report that this fall, the same
11 month that this panel was formed, a women's health clinic in
12 Claremont, New Hampshire, was vandalized not once but twice. The
13 second attack caused so much damage that the clinic was forced
14 to close for nearly six weeks, and this was a real disservice to
15 the women, men, and families who rely on the full range of services
16 that the clinic provides.

17 And, unfortunately, New Hampshire is not alone. After the
18 release of the deceptive, highly edited videos, incidents of
19 harassment against some health centers increased nine-fold in
20 just one month. I don't believe that today's hearing is a
21 fact-based objective investigation, but, rather, it is a
22 taxpayer-funded political attack based on discredited evidence.
23 I hope it will finally be time to move on.

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1 And, Madam Chair, if I could apologize for the need to leave
2 early and go back to a hearing. I appreciate, again, the
3 opportunity to be here.

4 Thank you.

5 [The prepared statement of Senator Shaheen follows:]

6

7 *****COMMITTEE INSERT 2*****

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1 Mrs. Blackburn. We thank you so much, and we know that you
2 do have to leave and get back, that you all are having votes this
3 morning, but thank you for the courtesy of your time and for
4 waiting for us.

5 Senator Sasse, you are recognized for five minutes.

6 Ms. Schakowsky. Let me just thank Senator Shaheen as well.
7 I appreciate your being here.

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1 STATEMENT OF HON. BEN SASSE, A UNITED STATES SENATOR FROM THE STATE
2 OF NEBRASKA

3
4 Senator Sasse. Thank you, Madam Chairman. Good morning,
5 Ranking Member. Thank you for including me. Many of us in the
6 Senate, like many of you in the House, and, more importantly like
7 millions of Americans, watched with grief the video footage of
8 abortion doctors and others discussing the sale of baby body parts
9 for profit.

10 As a legislator, but more importantly as a father -- I have
11 three little kids, three precious ones, one of my little girls
12 traveled with me from Nebraska to D.C. this week, and she is here
13 with us today. More importantly, as a father, I support your
14 investigation and your commitment to get to the bottom of what
15 is going on here.

16 Let's begin by stating clearly that we should not have to
17 be here today. The 1993 NIH Revitalization Act includes
18 testimony where California Democrat Henry Waxman said, and I
19 quote, "This amendment that I am offering would enact the most
20 important safeguards to prevent any sale of fetal tissue for any
21 purpose, not just for the purpose of research, any sale for any
22 purpose. It would be abhorrent," Waxman continued, "to allow for
23 the sale of fetal tissue and a market to be created for that sale."

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1 Words are important. The report language and the floor
2 debate created a very clear legislative intent that no one should
3 profit -- no one -- from the sale of fetal tissue, yet here in
4 today's documents and exhibits we see a business brochure and a
5 website urging "Partner with us and improve the profitability of
6 your clinic. Improve your bottom line. Be financially
7 profitable." These are quotes.

8 That procurement business offers a payment per tissue to
9 abortion clinics, and it offers to do all the work. That would
10 appear to mean that the abortion clinic has no costs and it would,
11 thus, appear to be precisely about profit as their marketing
12 literature says.

13 Questions of profit and legality matter because we are
14 talking about people. It matters whether or not procurement
15 businesses broke the law. It matters whether or not abortion
16 clinics are lining their pockets through the dismemberment and
17 distribution of children, all while receiving tax dollars. It
18 matters because we are talking about the tiny limbs of little
19 babies that have dignity. They are broken, yet still precious,
20 children of actual mothers and fathers.

21 As the committee's exhibits indicate, web pages exist where
22 a customer can click on a dropdown box that lists every organ of
23 a baby for sale. You can click on a brain, a heart, eyes, or a

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1 scalp. Then you select your gestation period, then you proceed
2 to checkout and you decide the method of shipment.

3 We should pause to linger here. Our humanity should be
4 repulsed. We should all be sad by this. In this committee room
5 and across the country, we will obviously have passionate
6 disagreements and discussions about the legality, the justice,
7 and the social implications of abortion policy. Like many in this
8 room, like a majority of Nebraskans, and like a majority of
9 Americans, I believe that every baby is precious and worthy of
10 legal protection, even at earliest phases of development.

11 I am unashamedly pro-life, but I also understand that many
12 others disagree on abortion policy. Our disagreements on
13 abortion will sometimes be heated, but wherever possible we should
14 be looking for consensus, and here, on this basic reality, we can
15 and should agree babies are not the sum of their body parts.
16 Babies are not meant to be bought, and babies are not meant to
17 be sold. Babies are just that; they are babies. They are meant
18 to be welcomed and rejoiced over, held and nurtured.

19 Outside of our Congressional responsibilities here, many of
20 us do in fact welcome, hold, and nurture little children. We
21 adopt and we foster and we mentor them. We offer hope, support,
22 and encouragement to their parents. Madam Chairman, your work
23 can and does transcend politics.

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1 I appreciate also your concern with children born alive
2 inside abortion clinics and with the treatment that they receive.
3 When I think of all the survivors of abortion, and I think about
4 your investigation into the sale of baby body parts for profit,
5 it makes born again -- born-alive legislation all the more
6 important. The Born-Alive Abortion Survivors Protection Act has
7 already passed the House by a bipartisan vote of 248 to 177, and
8 I have had the privilege of introducing the companion legislation
9 in the Senate, and I invite my Senate colleagues on both sides
10 of the aisle to be working together to pass this bill in our
11 chamber.

12 This law would simply ensure that babies who survive
13 abortions get a fighting chance by requiring medical attention
14 that is equivalent to what would be offered to any other premature
15 baby born at the same stage. No life is disposal. No child
16 deserves to have her life ended cold and alone, struggling for
17 breath outside the womb in an abortion clinic.

18 We Americans frequently cheer for the vulnerable, we fight
19 for the minority, we protect the powerless against the powerful,
20 and baby girls and boys are fighting for their lives. I encourage
21 my colleagues to fight for them and to support Senate 2066, the
22 Born-Alive Abortion Survivors Protection Act.

23 Madam Chairman, we look forward to monitoring the progress

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1 of your investigation, and thank you for including me in this
2 hearing.

3 [The prepared statement of Senator Sasse follows:]

4 *****INSERT 3*****

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1 Mrs. Blackburn. Thank you, Senator Sasse. We appreciate
2 your time. We are sorry for our delay. And we know that you have
3 to scoot back across to the Senate for votes, but thank you for
4 your time.

5 At this time, I would like to call forward our second panel.
6 And as they move forward to be seated on the panel, I will move
7 forward with introducing this panel to our audience, so that we
8 can move forward expeditiously. Fay Clayton is an attorney with
9 Robinson Curley & Clayton. Ms. Clayton practices civil
10 litigation for a wide range of clients from major corporations
11 to individuals in cases involving fraud, RICO securities, general
12 commercial matters, contract disputes, officer and director
13 liability, and shareholder and partnership concerns.

14 Mr. Robert Raben served as Assistant Attorney General for
15 Legislative Affairs with the U.S. Department of Justice where he
16 drove Attorney General Janet Reno's legislative initiatives and
17 handled the political challenges of Congressional oversight of
18 the department. He founded The Raben Group, a public policy
19 consulting organization, in 2002 and continues to serve as
20 president. He is a graduate of the Wharton School and the New
21 York University Law School.

22 Mr. Brian Lennon served as a federal prosecutor in Michigan
23 and Virginia for 15 years and a trial attorney for the U.S.

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1 Department of Justice's Civil Division. As the Deputy Chief of
2 the Criminal Division for the U.S. Attorney's Office in the
3 Western District of Michigan, Brian supervised the health care
4 fraud and computer-related crimes units, among others.

5 He also spent four and a half years as a judge advocate for
6 the U.S. Marine Corps, handling both civil and criminal matters.
7 Now in private practice with Warner Norcross and Judd, he
8 specializes in criminal defense, particularly health care fraud
9 and other white collar and drug offenses, corporate internal
10 investigations, and compliance matters.

11 Mr. Michael Norton served as U.S. Attorney for Colorado from
12 1988 to '93. He was appointed by President Reagan and reappointed
13 by President George H.W. Bush. Mr. Norton has been practicing
14 law since 1976 and is admitted to the bars in the states of Colorado
15 and Virginia as well as Washington, D.C.

16 Catherine Glenn Foster is an associate scholar with the
17 Charlotte Lozier institute, where she authors research papers on
18 science, medicine, and research in the service of human life. She
19 was formerly an attorney with Alliance Defending Freedom and is
20 a graduate of Georgetown University Law Center.

21 Kenneth Sukhia was appointed U.S. Attorney for the Northern
22 District of Florida by President George H.W. Bush and has served
23 as litigation counsel to numerous corporations and officials.

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1 Mr. Sukhia has also served as law clerk at the Florida Supreme
2 Court and the U.S. Court of Appeals and as a senior partner in
3 one of Florida's oldest and largest statewide firms. He began
4 his own firm, the Sukhia Law Group, in the Florida state capital
5 in 2008.

6 You are aware that the Select Investigative Panel is holding
7 an investigative hearing and that we will take your testimony
8 under. Do you have any objection to testifying under oath?

9 Okay. The chair then advises you that under the rules of
10 the House Committee on Energy and Commerce, you are entitled to
11 be advised by counsel. Do you desire to be advised by counsel
12 for today's hearing?

13 Okay. In that case, will you please rise and raise your
14 hand, and I will swear you in.

15 [Witnesses sworn.]

16 Mrs. Blackburn. Thank you. You are now under oath and
17 subject to the penalties set forth in Title 18, Section 1001 of
18 the U.S. Code.

19 You will each give a five-minute summary of your written
20 statement. Ms. Clayton, we will begin the testimony with you,
21 and you are recognized for five minutes.

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1 STATEMENTS OF FAY CLAYTON, ROBINSON CURLEY & CLAYTON, P.C.; ROBERT
2 RABEN, PRESIDENT AND FOUNDER, THE RABEN GROUP; BRIAN LENNON,
3 WARNER NORCROSS & JUDD; MICHAEL NORTON, THOMAS N. SCHEFFEL &
4 ASSOCIATES, P.C.; CATHERINE GLENN FOSTER, CHARLOTTE LOZIER
5 INSTITUTE, SOUND LEGAL; AND KENNETH SUKHIA, SUKHIA LAW GROUP

6
7 STATEMENT OF FAY CLAYTON

8 Ms. Clayton. Thank you, Madam Chair. I have been a
9 corporate litigator since 1978, and I am here today despite a
10 family medical situation for two reasons. One is that women's
11 reproductive health and medical research are being threatened by
12 these hearings. The second reason is that I have instructive
13 experience to share with this Panel on the topic that you are
14 considering here.

15 Sixteen years ago, a client of mine, Anatomical Gift
16 Foundation, a nonprofit corporation that provided donated tissue
17 to medical researchers in hopes of curing the diseases, including
18 the ones Senator Shaheen mentioned earlier, that nonprofit was
19 falsely accused by life Dynamics, the anti-abortion group
20 Congresswoman Schakowsky mentioned, accused of selling fetal
21 tissue.

22 These baseless charges were made in a videotape sent by Life
23 Dynamics to Congress, and in that video the person making the

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1 accusations was anonymous. As it happened, an employee of
2 Anatomical Gift Foundation, my client, had gone to work for
3 another company in violation of his contract. AGF hired me to
4 sue. That man's name was Dean Alberti.

5 In Alberti's deposition, which was under oath, like all of
6 us today, but unlike what he said in the videotape -- the videotape
7 that Life Dynamics had sent to Congress, Alberti admitted that
8 he was the person in that video, and he admitted that what he had
9 said in that video was fictional.

10 He testified that he told those lies because Life Dynamics
11 had paid him to, and he said, "I needed the money." He had
12 repeated those falsehoods on TV's 20/20, but he knew better than
13 to lie under oath when I deposed him, where the penalties of
14 perjury, as the chair acknowledged, do arise.

15 Those of you who were here in the year 2000 may recall the
16 humiliation that certain members of the House Committee suffered
17 when their star witness, Dean Alberti, went up in flames and
18 admitted that that much-touted video had been fabricated. Those
19 House hearings established that my client had done nothing wrong,
20 that fetal tissue wasn't for sale at all, and that anti-abortion
21 zealots -- Life Dynamics -- had foisted a false witness on
22 Congress. What was for sale wasn't fetal tissue; it was a phony
23 witness statement, and it had been bought and paid for by

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1 anti-abortion extremists.

2 I find it curious, given the not-so-distant history of the
3 strikingly similar scenario, that this Panel has not demanded
4 sworn testimony of the accusers, the latest batch of anti-abortion
5 accusers, as you have asked of us, Chair Blackburn, haven't asked
6 for that, haven't asked them to go under oath, and that seems
7 strange to me, particularly when they come up with such a similar
8 tale about the so-called sale of fetal tissue, which again is a
9 lie.

10 This suggests to me that someone is afraid to put David
11 Daleiden and his star witness, Holly O'Donnell, under oath
12 because, as we saw with the Dean Alberti fiasco, when penalties
13 of perjury attach, sometimes instead of fiction the actual truth
14 comes out. We know Daleiden and his crew doctored videos to the
15 point that the federal judge blocked the release of further tapes
16 because they were fraudulent.

17 Another fact we know about them comes from the Los Angeles
18 Times' examination of Daleiden's unedited videos. They show
19 Daleiden coaching and manipulating the testimony of Holly
20 O'Donnell, whose video interview, by the way, looks more like
21 playacting than any genuine emotion. Without cross-examination
22 of Daleiden and his crew under oath, we have no way of knowing
23 what he offered or said to Ms. O'Donnell when his camera was not

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1 running.

2 And in Texas, when Daleiden went before a grand jury convened
3 for the express purpose of prosecuting Planned Parenthood, the
4 grand jury did something very different. It didn't indict
5 Planned Parenthood. It indicated Daleiden for falsehoods. And
6 the Texas grand jury found, of course, that Planned Parenthood
7 had done nothing wrong.

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

13 As Alberti told the House committee in the year 2000, "When
14 I was under oath, I told the truth. Anything I said in the video,
15 when I was not under oath, that is a different story." So I have
16 to ask, is this Panel looking for the truth or for another story?
17 A real inquiry would start with sworn testimony from Daleiden and
18 O'Donnell, and that would be true even if the doctored videotapes
19 didn't have so much in common with the deceitful tapes that the
20 abortion opponents, including Life Dynamics, staged 16 years ago.

21 This Panel's failure to allow cross-examination of Daleiden
22 and his cohorts sends the message loud and clear that those stories
23 would not hold up under penalty of perjury any more than the

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1 baseless slurs Dean Alberti made back in the year 2000 when Life
2 Dynamics bought and paid for his testimony.

3 And, by the way, you know, Crutcher is one of the trainers
4 of Daleiden.

5 It just strikes me as inexcusable that the Panel has been
6 using its subpoena power to compel testimony from health care
7 providers and medical researchers who have far better things to
8 do with their time like providing health care, working to cure
9 disease, than Daleiden and his crew.

10 Mrs. Blackburn. Ms. Clayton?

11 Ms. Clayton. I just ask that until and unless this Panel
12 puts Daleiden and O'Donnell under oath, and gets down -- and tries
13 to get to the bottom of what they did, that these proceedings be
14 terminated and our elected officials be allowed to return to doing
15 the people's business.

16 Thank you.

17 [The prepared testimony of Ms. Clayton follows:]

18

19 *****INSERT 4*****

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1 Mrs. Blackburn. Thank you, Ms. Clayton.

2 Mr. Raben?

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1 STATEMENT OF ROBERT RABEN

2

3 Mr. Raben. Good morning, Chair Blackburn, Ranking Member
4 Schakowsky, members of the committee, thank you so much for having
5 me this morning. My name is Robert Raben. I am in private
6 practice. Over the years, I have served as counsel to the House
7 Judiciary Committee and was confirmed as Assistant Attorney
8 General for the Office of Legislative Affairs at the Department
9 of Justice.

10 In 1999, as I was watching you this morning and the decorum
11 and kindness with which you obviously run this committee, I was
12 reminded that my then-chair -- I was Democratic counsel, but the
13 chair of our committee, Henry Hyde, walked across the Capitol to
14 testify for my nomination, and what a wonderful day that was and
15 how much I miss him and appreciated him.

16 I have taught law, practiced at a large law firm, and clerked
17 after law school. I deeply appreciate the law and this
18 committee's attention to it.

19 For over 20 years, my work has involved the representation
20 of people and organizations before the Congressional executive
21 branch. I give this testimony today as someone who has
22 experienced both sides of advocacy and representation around
23 investigations of all forms. This committee has asked us to opine

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1 on the questions of whether the current legislative language
2 adequately prevents profiteering in the sale of fetal tissue and
3 the parameters around what constitutes a sale of profit of fetal
4 tissue.

5 In 2000, in my capacity as Assistant Attorney General for
6 the Office of Legislative Affairs at the Department of Justice,
7 I was called upon to respond to almost identical concerns
8 expressed by members of the Congress regarding the alleged
9 transfer of fetal tissue for profit. On March 9, 2000, I
10 communicated with Congress by signed letter, a willingness to
11 investigate and learn further about credible claims and
12 allegations.

13 While I don't have specific recollection of further oral
14 conversations within the Department subsequent to that written
15 communication, I know from the public record that in July of 2000,
16 Acting Kansas U.S. Attorney Jim Flory decided, after a thorough
17 review of the issues involved, that there were no violations of
18 federal statutes, thereby announcing the closure of a thorough
19 investigation into related facts. That is a matter of public
20 record. I also recalled yesterday a second investigation from
21 the Colorado U.S. Attorney and FBI that was similarly closed.

22 We are today witnessing virtually identical allegations.
23 While I am unaware as to whether DOJ or the FBI presently have

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1 ongoing inquiries into the factual allegations, it is significant
2 to note that 12 states have affirmatively looked into related
3 matters and declined to pursue any charge. An additional eight
4 states have affirmatively declined to even investigate.

5 Given the importance that some people have about deferring
6 to the states, I would like to just read into the record the 12
7 states that have affirmatively said they have investigated and
8 decided not to pursue charges around related allegations --
9 Florida, Georgia, Indiana, Kansas, Massachusetts, Michigan,
10 Missouri, Ohio, Pennsylvania, South Dakota, Texas, and
11 Washington.

12 Innumerable reasons exist as to why federal law enforcement
13 has little record of indictment under the existing language, which
14 may include the dearth of actual profiteering and fact, the
15 deference to state law enforcement authorities which are
16 certainly capable of determining the same predicate, past failed
17 attempts to establish wrongdoing, or, paramount in this area, a
18 lack of credibility of those presenting facts to the law
19 enforcement officials.

20 Of the ultimate question on which this committee is presently
21 engaged, whether or not the existing statute merits either change
22 or more rigorous enforcement, I believe that the statute is sound
23 and fully addresses its intended aims, as important today as it

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1 was when it passed with overwhelming bipartisan majorities in
2 1993.

3 The statute, a considered bipartisan judgment of Congress,
4 was meant to address profiteering from the sale of fetal tissue.
5 There is no evidence of an outbreak of such behavior in this
6 nation. Further, I am confident that any acts of intentional
7 misbehavior would be investigated and punished by law
8 enforcement, both federal and state.

9 Thank you for having me.

10 [The prepared testimony of Mr. Raben follows:]

11

12 *****INSERT 5*****

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1 Mrs. Blackburn. Thank you, Mr. Raben.

2 Mr. Lennon, you are recognized for five minutes.

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1 STATEMENT OF BRIAN LENNON

2

3 Mr. Lennon. Chairman Blackburn, Ranking Member Schakowsky,
4 and distinguished members of this Panel, thank you for the
5 opportunity to speak to you today about the pricing of fetal
6 tissue. I am currently a partner at the law firm of Warner
7 Norcross and Judd in Grand Rapids, Michigan. For 13 years before
8 entering private practice, I was an Assistant U.S. Attorney in
9 the Western District of Michigan.

10 I am not a medical ethicist or a theologian. I do not
11 represent any advocacy group on either side of the life versus
12 reproductive rights debate, and I am not here to advocate for any
13 change in federal legislation.

14 But as a former federal prosecutor, and now criminal defense
15 counsel, I hope to provide some value to this Panel through
16 objective legal analysis of the exhibits to determine whether the
17 abortion clinics and/or the procurement business identified in
18 the exhibits violated the statute.

19 Based on my review of the exhibits, and I looked at this as
20 if an agent had showed up at my office on any work day with these
21 exhibits and asked me to examine them. But based on that review,
22 I believe a competent and ethical federal prosecutor could
23 establish probable cause that both the abortion clinics and the

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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 The statute itself defines valuable consideration by
2 describing what it is not. It does not include reasonable
3 payments associated with the transportation, implantation,
4 processing, preservation, quality control, or storage of human
5 fetal tissue. If valuable consideration is payment for something
6 other than this exhaustive list of delineated services, this
7 element is also established.

8 As for the abortion clinics, the marketing materials that
9 I have reviewed clearly state that there is a financial profit
10 from this partnership. Several of the exhibits indicate the
11 procurement business pays for per -- per the tissue, not a
12 reasonable payment for the listed services. Therefore, the
13 exhibits indicate, in my opinion, that these services are provided
14 by the procurement business through their embedded technicians,
15 and not the abortion clinics, therefore, that these payments
16 appear to be a valuable consideration. Indeed, they could be
17 profits.

18 As for the procurement business, it is my opinion that a much
19 deeper analysis of the company's financials is necessary in order
20 to establish the valuable consideration element beyond a
21 reasonable doubt. Because the businesses do in fact incur costs
22 associated with these delineated services, a forensic accounting
23 would be essential to breaking down the company's financials.

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1 Just looking at the growth and looking at their revenue doesn't
2 tell you whether they are profiting. And if they are profiting,
3 in my opinion, they violated the law.

4 I think there are some other theories here although that I
5 think a prosecutor would pursue that may be more important in
6 looking at the potential criminality of the businesses, the
7 procurement businesses, and those are aiding and abetting and
8 conspiracy.

9 Based on my limited review of the exhibits reviewed and the
10 strength the substantive case against the abortion clinic,
11 pursuing an aiding and abetting or conspiracy count against the
12 procurement business, rather than a substantive count, may be a
13 stronger theory of culpability.

14 As I conclude, I would just say that I believe federal
15 prosecutors take pride in protecting the most vulnerable among
16 us. The ones I probably served with in the Western District of
17 Michigan did not shy away from the tough cases, and they put their
18 personal politics aside when asked to evaluate cases for
19 prosecution.

20 Evidence, or the lack thereof, not politics, should
21 determine whether a U.S. attorney impanels a grand jury to
22 investigate abortion clinics and human fetal businesses in their
23 district.

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1 Again, I thank you, Chairman Blackburn and Ranking Member
2 Schakowsky, and the members for allowing me to testify today, and
3 I welcome your questions.

4 [The prepared testimony of Mr. Lennon follows:]

5

6 *****INSERT 6*****

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1 Mrs. Blackburn. Thank you, Mr. Lennon.

2 Mr. Norton, you are recognized for five minutes.

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1 STATEMENT OF MICHAEL NORTON

2

3 Mr. Norton. Thank you, Madam Chair and Ranking Member
4 Schakowsky, and esteemed members of the committee. My name is
5 Michael J. Norton. I am an attorney in the private practice of
6 law in Denver, Colorado.

7 I have had the privilege of serving as United States Attorney
8 for the state and district of Colorado. I was first appointed
9 by President Ronald Reagan and then reappointed by first President
10 Bush.

11 Ms. DeGette, nice to see you again.

12 I have a written statement which I respectfully request be
13 incorporated into the record. I simply just want to summarize
14 my comments and my remarks in the time that is available.

15 First of all, I will say to the committee that this is not
16 about women's health. It is not about abortion, how one spins
17 on the issue of abortion. It is whether or not there is probable
18 cause to believe that crimes have been committed and, if so, what
19 to do about that. To do nothing about the potential of the
20 criminal -- of the commission of criminal crimes is indeed
21 flouting the criminal justice system of this nation, and I think
22 preferring those who are in well-connected places over those who
23 are not.

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1 So I suggest to you at the outset, Madam Chair and members
2 of this committee, that what this committee is about is highly
3 important and very critical to the criminal justice system and
4 to the sanctity of that system in the United States of America.

5 It is really not about the issue of abortion because
6 potential profiteering and trafficking in aborted fetal tissue
7 is of grave concern, not only on a federal level but also in many
8 states, including my own state of Colorado, which has adopted a
9 law similar to the federal law that is being looked at by this
10 committee today.

11 There are many, many people, therefore, concerned that not
12 only this federal state, but also the state statutes at issue have
13 been violated and are being flouted by the abortion industry. In
14 2015, it was revealed by one of these undercover videos that
15 Denver's Planned Parenthood of the Rocky Mountains was indeed
16 making a profit by harvesting and trafficking the hearts, the
17 brains, the lungs, the eyes, the livers, and other body parts of
18 babies whose lives Planned Parenthood had ended by abortion.

19 These gruesome revelations came from a series of videos
20 released by the Center for Medical Progress that the committee
21 has talked about. And it was clear from the videos that Planned
22 Parenthood had been actively engaged in harvesting and
23 trafficking for profit body parts of babies whose lives Planned

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1 Parenthood had ended.

2 Those videos have not created a general queasiness about
3 surgery and blood. No matter how one stands on the issue of
4 abortion, no one who has viewed these videos can come away thinking
5 that Planned Parenthood's harvesting and selling of these baby
6 body parts is consistent with our values or consistent with the
7 law.

8 If wrongdoing has occurred, and I concur with the assessment
9 Mr. Lennon has made of the facts and the circumstances as to the
10 commission of crimes in this case, and I would add that it appears
11 to me, quite frankly, that criminal violations of the Health
12 Insurance Portability Act, HIPAA, have also been committed by the
13 embedding of the procurement business technician in the abortion
14 facility itself. And the review by that technician of privileged
15 medical records of patients in order to determine which body parts
16 that technician wants to harvest -- have harvested and sold to
17 him has also been committed.

18 There are some facts that need to be determined, and a
19 competent criminal investigation could determine those facts.
20 But to do nothing is simply wrong, Madam Chair and members of this
21 committee, and I thank the committee for its courage in moving
22 into this area, investigating this area. I urge it to complete
23 its investigation and to refer this matter to the U.S. Department

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1 of Justice for appropriate action, which I pray and hope is taken.

2 Thank you, Madam Chair.

3 [The prepared testimony of Mr. Norton follows:]

4

5 *****INSERT 7*****

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1 Mrs. Blackburn. Thank you, Mr. Norton.

2 Ms. Foster, you are recognized for five minutes.

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1 STATEMENT OF CATHERINE GLENN FOSTER

2

3 Ms. Foster. Thank you. Ms. Chairman, Ms. Schakowsky,
4 distinguished members of this Panel, I am privileged to present
5 this testimony concerning the pricing of human fetal tissue. My
6 views are consistent with those of the Charlotte Lozier Institute
7 where I am associate scholar, which is dedicated to advancing
8 science, medicine, and research in the service of human life and
9 to promoting a culture and polity of life.

10 My views are similarly consistent with those of Sound Legal,
11 a law firm and legal organization advocating for the universal
12 right to life. As an attorney, I have dedicated my career to
13 advocating for the right of every innocent human being to be
14 protected. And so I am troubled by those in the abortion and
15 tissue procurement industry who scheme to trade in baby body parts
16 for their own financial enrichment.

17 The public learned of these back alley transactions last year
18 when undercover videos of the organ business brokers surfaced
19 online. Indeed, the trade in fetal body parts is a business. As
20 demonstrated by the evidence presented by this Panel, clinics and
21 procurement companies have been getting away with charging far
22 more than the allowed costs for harvesting, transporting, and
23 warehousing body parts as they wait for customers.

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1 In doing so, they have violated both the intent and the letter
2 of Section 289g-2, which bars, among other things, the transfer
3 of human fetal tissue for valuable consideration. The statute's
4 definition of "valuable consideration" is straightforward. If
5 payment is not reasonable or not associated with the
6 transplantation, implantation, processing, preservation,
7 quality control, or storage of human fetal tissue, it is not
8 permitted.

9 We can all agree on this statute. It passed with bipartisan
10 support in a Democratic Congress and was signed into law by
11 President Clinton. Representative Waxman at the time called the
12 fetal corpse market abhorrent, and yet the Panel's evidence
13 reveals that abortion clinics are being promised a profit, and
14 are paid, even when they have no apparent costs to be reimbursed,
15 and further multiplying a clinic's windfall via savings on
16 disposal services.

17 Tissue procurement companies are likewise paid exorbitantly
18 by their customers. This market in baby organs and tissues
19 demonstrates a flagrant and repeated disregard for the rule of
20 law. It was no surprise when America's biggest abortion
21 business, facing public and prosecutorial exposure, relented and
22 agreed to end its longstanding practice of receiving direct
23 payments for baby body parts.

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1 And yet in my years of work in this field, and in the 23 years
2 that Section 289g-2 has been law, I am unaware of a single instance
3 in which it has been enforced. This payment is right to shine
4 a light on big abortion's back alleys.

5 For perhaps we forget that this law was meant to protect the
6 ethical imperative that recognizes the dignity in every human
7 life. In the face of clinical, sanitized language, we may become
8 desensitized. In the abortion clinic, a human baby is called
9 "tissue" or a "fetus." A head is a "calvarium" or "cal." The
10 technician who counts body parts is a products of conception, or
11 POC, worker.

12 And by converting human lives into a bulk commodity, public
13 discussion has been stifled. But we are in fact talking about
14 real and unique human beings whose lives were tragically snuffed
15 out. We are talking about affording them the minimal dignity that
16 comes with not having their remains further picked through to be
17 bought and sold like chattel.

18 I know that the abortion industry and its allies are waging
19 a campaign against any effort at transparency or accountability.
20 It is what we can expect from a big business with an emphasis on
21 maximizing profits and a lot of money to lose. And so big abortion
22 is fighting back with all its financial and political might,
23 investing its political and monetary stockpile to buy public

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1 sanction, and weighing its thumb down on the scales of justice with
2 high-profile PR firms, pocket politicians, and spellbound media.

3 With these allies, until now the abortion industry has
4 succeeded in shouting down the voices acknowledging the public
5 evidence of guilt and crying out for justice. But no more. We,
6 the people, are not afraid of confronting the truth, and we
7 encourage this Panel and those in law enforcement to pursue it.
8 Common sense and common decency demand enforcement of Section
9 289g-2.

10 Thank you.

11 [The prepared testimony of Ms. Foster follows:]

12

13 *****INSERT 8*****

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1 Mrs. Blackburn. Thank you, Ms. Foster.

2 Mr. Sukhia, you are recognized for five minutes.

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1 STATEMENT OF KENNETH SUKHIA

2

3 Mr. Sukhia. Thank you, Madam Chairman, and the members of
4 this committee. I was privileged and honored to serve as the
5 United States Attorney for the Northern District of Florida, and
6 before that was an Assistant U.S. Attorney for 10 years.

7 Much of my expertise that I could lend to the committee would
8 be in, of course, the area of determining whether a grand jury
9 should be empaneled, whether a case should proceed, whether
10 investigation should be pursued. And I have heard it said today
11 that this is a committee that has disdain for the truth, that this
12 is not a fact-based inquiry, and I -- when I look at the exhibits
13 that were submitted, but also of course when I looked at the videos
14 that were presented, it strikes me as odd that there would not
15 be an aggressive and meaningful investigation into the allegation
16 that indeed human baby parts are being sold for profit.

17 Article II, Section 3, of our United States Constitution in
18 fact requires of the executive branch that it faithfully execute
19 the laws of the country. By not faithfully executing those laws,
20 you are in fact taking specific affirmative action to defy what
21 is required by the Constitution.

22 And in this situation, it is beyond my assessment and belief
23 that when you have a procurement industry that is actually

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1 marketing to the abortion clinics that they can procure or work
2 to gain more profits by this method. And when they are seeding
3 their own employees in the clinic to do those jobs that would
4 indeed cost and would indeed be the services that would compromise
5 the legitimate cost or payment for those services, then the
6 question clearly arises, have these clinics profited from this
7 process? It is a very simple basic issue.

8 And so we are not saying as a prosecutor when someone comes
9 in the door with this evidence, oh, this is absolutely positively
10 a fact. We are saying, no, this justifies a full and complete
11 and a thorough investigation. And I think it is -- there does
12 seem to be a pattern when, oh, this can't possibly have any basis
13 because, let's see, 16 years ago someone lied. So we can't take
14 this. This is the same sort of thing that has happened before.

15 And we should also stop the prosecution of all murders
16 because there have been cases where persons have lied and people
17 have been wrongly convicted. And the whole argument is nonsense
18 and, in fact, this whole notion that, oh, let's fall all over
19 ourselves to insist that, oh, we are being -- this is nothing but
20 an effort to attack the reproductive rights of our citizens, when
21 it is in fact an effort to enforce the law, which is required of
22 our Constitution.

23 Thank you.

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1 [The prepared testimony of Mr. Sukhia follows:]

2

3 *****INSERT 9*****

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1 Mrs. Blackburn. Thank you, Mr. Sukhia.

2 At this time, we will begin the --

3 Mr. Nadler. Madam Chair?

4 Mrs. Blackburn. -- questioning on our --

5 Mr. Nadler. Madam Chair?

6 Mrs. Blackburn. -- side. Yes, the gentleman is
7 recognized.

8 Mr. Nadler. Parliamentary inquiry, please.

9 Mrs. Blackburn. Parliamentary inquiry. State your
10 inquiry.

11 Mr. Nadler. Yes. Madam Chair, the witnesses appear to have
12 relied heavily on the premise from your staff that clinics incur
13 no costs related to fetal tissue donation. That premise is
14 captured in Exhibit G, which you previously had up on the screen.
15 Could you put that up on the screen for a moment again, please,
16 while I complete the parliamentary inquiry? Exhibit G.

17 Mrs. Blackburn. Let's bring up Exhibit G, and please state
18 the inquiry.

19 Mr. Nadler. Is that Exhibit G? That is not Exhibit G.
20 That is it. Thank you.

21 Madam Chair, this chart says that the clinic has "no costs,
22 so the payments are pure profit for the clinic." This is
23 contradicted by Exhibits C6, C9, and C17, which show that some

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1 clinics obtain consent, draw blood, fill out paperwork, among
2 other things, related to fetal tissue donation. These are all
3 requests that the Government Accountability Office recognized 16
4 years ago as reimbursable "direct costs."

5 Madam Chair, can you explain how this document, Exhibit G,
6 was created and its factual foundation, including the discrepancy
7 between what this staff-created chart asserts, namely that there
8 are no costs, and information on other documents in your packet,
9 Exhibits C6, C9, and C17, which detail such costs?

10 Mrs. Blackburn. I thank the gentleman for the inquiry. We
11 discussed this previously before you arrived at the hearing, and
12 all of the documents today come from the investigative work that
13 took place by submissions that came to us, whistleblower
14 information. The charts for discussion, of which G is one, were
15 compiled from that work by our staff, and at this time we begin
16 our questioning --

17 Mr. Nadler. Madam Chair, further parliamentary --

18 Mrs. Blackburn. -- and I turn to Mr. Pitts.

19 Mr. Nadler. -- further parliamentary inquiry, and I don't
20 believe --

21 Mrs. Blackburn. State the inquiry.

22 Mr. Nadler. Thank you. I don't believe this was discussed
23 while I was at the Judiciary Committee. How can you explain the

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1 discrepancy between the information on Exhibit G, namely that
2 no costs were incurred, and the information on Exhibits C6, C9,
3 and C17, which lists some of those costs? That didn't happen.

4 Mrs. Blackburn. There is no discrepancy, and I thank the
5 gentleman for the inquiry. At this time, we begin --

6 Mr. Nadler. A discrepancy --

7 Mrs. Blackburn. -- we begin our hearing with Mr. Pitts.

8 Mr. Nadler. Further parliamentary -- discrepancy, of
9 course there is a discrepancy.

10 Mrs. Blackburn. Do you have a motion?

11 Mr. Nadler. No. I have a parliamentary inquiry, and I will
12 --

13 Mrs. Blackburn. Okay.

14 Mr. Nadler. -- which is being sidestepped and not
15 answered. This Exhibit G says abortion clinic explanation, the
16 abortion clinic has no costs, so the payments from the PB, the
17 procurement business, to the AC, the abortion clinic, are pure
18 profit. All costs are borne by the PB or the customer.

19 Exhibit C9 says -- it is an exhibit of clinic procedures and
20 policies and it says, "You must inform," you, the employee, "must
21 inform the assistant manager and HSSs when you have completed your
22 work." This will ensure that they do not continue to consent and
23 draw unnecessary blood samples. The interaction of --

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1 Mrs. Blackburn. If the gentleman will yield, you are citing
2 a procurement business procedure. So one is the clinic, one is
3 the procurement business. I thank the gentleman for the inquiry.

4 Mr. Nadler. Procurement business has to tell the clinic
5 staff, which has to be satisfied, and that takes time and there
6 is a direct cost.

7 Mrs. Blackburn. At this --

8 Mr. Nadler. So they have to tell the abortion clinic that
9 they are done, so that the abortion clinic does not continue to
10 take more samples, et cetera, which is a direct cost for the
11 clinic, not the procurement business. So that is a direct
12 contradiction of --

13 Mrs. Blackburn. The documents are separate. It is not a
14 direct contradiction, and the documents are separate. One
15 relates to abortion clinic; the other to the permit business.

16 Mr. Nadler. If this is not a direct contradiction, what is
17 the methodology to determine that there are no costs for the
18 abortion clinic as asserted in Exhibit G, which apparently has
19 no basis?

20 Mrs. Blackburn. It is all based on the investigatory work,
21 and I thank you for the parliamentary inquiry.

22 Mr. Nadler. Well --

23 Mrs. Blackburn. At this time, we are going to Mr. Pitts.

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1 Mr. Nadler. -- investigatory -- and further parliamentary

2 --

3 Mrs. Blackburn. We have --

4 Mr. Nadler. -- further and final, I hope, parliamentary
5 inquiry, can you explain how using a chart that draws conclusions
6 that have no objective basis in fact, other than your statement
7 that somebody investigated, does not violate House rules
8 prohibiting conduct that does not reflect credibility or may
9 discredit or dishonor the House and this Panel, Rule 11, Clause
10 4, and Rule 23, Clause 1? Because what I am hearing is that there
11 is -- that staff people somehow derived this information -- we
12 are not told how, what --

13 Mrs. Blackburn. Mr. Nadler, you know, this is not a
14 parliamentary inquiry.

15 Mr. Nadler. Oh, yes, it is.

16 Mrs. Blackburn. Basically, you are trying to debate the
17 documents, and we need to move on with our questions.

18 Mr. Nadler. How is this not --

19 Mrs. Blackburn. And I am turning to Mr. Pitts. Mr. Pitts,
20 you are recognized for five minutes for questions.

21 Mr. Pitts. Thank you, Madam Chair, for calling this
22 important hearing on the pricing of fetal tissue. This issue has
23 caused me considerable concern because one of the underpinnings

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1 and safeguards of the statute that allowed for the donation of
2 fetal tissue for transplantation and research was that this tissue
3 would not be sold.

4 The author of the statute, Representative Waxman, stated
5 during the floor debate in 1993, and I quote, "It will be abhorrent
6 to allow for the sale of fetal tissue and a market to be created
7 for that sale." And yet this is what is happening, as one of the
8 witnesses said, in the back alleys today.

9 As seen on Exhibit B2 and B3, the procurement business
10 markets itself on its brochure as a way for clinics to make
11 additional income by allowing the procurement business,
12 procurement technicians, to take fetal tissues and organs from
13 aborted babies immediately after the abortion was completed using
14 the words "financially profitable, fiscally rewards, financial
15 benefit" on its brochure.

16 The Select Panel investigation reveals that every
17 conceivable harvesting task is performed for the technician
18 employed by the procurement business. And so procurement
19 businesses, essentially the middleman, are paying fees to
20 abortion clinics, but the abortion clinics are incurring no costs.
21 Exhibit D shows payments from the procurement business to abortion
22 clinics for aborted babies and baby blood. Exhibit D1.

23 The abortion clinic charged the middleman with a bill for

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1 \$11,365 in August of 2010 for baby parts and blood that the
2 middleman's technicians harvested. Another invoice in
3 January/February of 2011 charged \$9,060 for harvested baby parts
4 and blood. The middleman even makes it easy for the researcher
5 to purchase baby body parts. Exhibit C3, the procurement
6 business order form, or the dropdown menu for baby organs, shows
7 just how easy this is.

8 First, it asks on the left side, "What type of tissue would
9 you like to order?" And I suppose you could respond, anyone could
10 respond to this, "I would like to order brains." And then it says,
11 "Number of specimens." Well, six, let's say, baby brains.
12 Gestational range, start and end. Well, that would be 16 to 18
13 weeks.

14 And then here is another question. Add another tissue type?
15 You could say yes. Another tissue type listed, female
16 reproductive system and ovaries. You could say, "I take five of
17 those at 15 weeks." You could add, you know, five baby tongues.

18 Shipping options. You could response, yes, I want it rush
19 ordered. So, for crying out loud, this is the Amazon.com of baby
20 body parts. There is a market for baby body parts, and you get
21 what you pay for. This is absolutely repulsive. And we must not
22 forget, as was testified here, each one of these, you know, little
23 baby brains or tongues represent a baby. How can anyone defend

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1 this practice?

2 All this shows, that in both intent and in practice, these
3 organizations were making money well above the actual cost. So
4 going back to Exhibit B2 and B3, the company brochure, the website,
5 show intent, their publicity, marketing materials.

6 My question for the former prosecutors for DOJ -- we will
7 start with Mr. Sukhia, Mr. Norton -- what communications or
8 information would you seek to learn whether the intent of the
9 procurement business and the abortion clinic was to profit from
10 selling baby body parts? Mr. Sukhia, let's start with you.

11 Mr. Sukhia. Yes, Congressman Pitts.

12 Mr. Pitts. Put on your mike.

13 Mr. Sukhia. Yes, sir. I had pressed the button, and then
14 it went off. Well, some of that evidence is already in this
15 record. I have heard, again, everyone quickly rushing to insist
16 that these videotapes are just deceptively prepared. In other
17 words, do what we are extremely deft at doing, this industry, which
18 is deflecting, and everyone else is at fault.

19 Let's shift the focus so everyone is focused on, hey, what
20 this -- these videos did and what this person said in the -- how
21 he prepared the videos. But those videos were posted; all of
22 those videos were posted. And there are some things that, when
23 people say them on tape, it doesn't matter what they didn't say

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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 Sukhia?

2 Mr. Sukhia. Sukhia. Thank you.

3 Ms. Schakowsky. Oh, sorry. And yet Mr. Daleiden and his
4 partner were actually indicted as a consequence. So, you know,
5 that is a comment. It is not a question. It is a fact that that
6 has been looked into.

7 The other thing is, before -- I want to ask Ms. Clayton a
8 question, but I also want to go back to a letter and numbers of
9 documents presented by StemExpress that would completely
10 discredit the exhibits that have been mentioned. And I want to
11 just, as far as B2, the majority's use of this brochure is
12 misleading at best. It was used by StemExpress with hospitals
13 and clinics involved in a broad spectrum of work that the company
14 supports related to adult blood, adult tissue, biopsies, et
15 cetera, not fetal tissue donation.

16 Exhibit B3, the StemExpress website screenshot makes
17 absolutely no reference to fetal tissue. In fact, it pertains
18 to the overwhelming majority of StemExpress' work with adult blood
19 and tissue that has nothing to do with fetal tissue, which
20 accounted for less than 1 percent of the company's revenue in 2014
21 before losses.

22 They have repeatedly offered to come in and provide exactly
23 the specific information that is raised in these exhibits and that

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1 has been turned down. I think it is shameful for an investigation
2 that seeks to get supposedly to the truth.

3 Now, I want to ask Ms. Clayton a question, and I think that
4 this parallel is worth examining because the facts are the same
5 -- discredited video which led to an investigation that found no
6 guilt.

7 So I want to skip part of this but ask, there were accusations
8 made against your client that impacted him, the client that was
9 found to have done nothing wrong. And I wonder how it affected
10 his business reputation, his own safety, and that of his family.

11 Ms. Clayton. Yes, Congressman Schakowsky. The company --
12 it was a company, Anatomical Gift Foundation, and it was
13 threatened by terrorists on the anti-choice side, including the
14 Army of God. That is the group that shot Dr. Tiller, not the time
15 he was murdered but the time he was shot before his murder. Army
16 of God is one of the most violent, outrageous, anti-choice groups
17 around, and AGF, my client, received threats of that as soon as
18 these outrageously fallacious videotapes were sent to Congress
19 and got circulated, when they were on 20/20, and everybody
20 believed they were true. Oh, it must be true. We saw it on a
21 videotape, not under oath.

22 I would just comment that anyone who wants to look at a
23 defense of any of this, first thing you do, get Mr. Daleiden under

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1 oath, see what he says when the penalty of perjury would attach,
2 because when Mr. Alberti was under oath in the deposition that
3 I took, he suddenly started telling the truth, and what he told
4 was that everything else was a lie.

5 Meanwhile, these threats endanger the life and safety of
6 people at clinics all over the country as in Colorado. A crazy
7 Mr. Dear murdered three people because he thought it was true about
8 these tapes, the sale of baby body parts, even though 12 states,
9 the Texas grand jury have found that is completely fallacious.

10 Ms. Schakowsky. I just want to say your client provided a
11 letter sent by this anti-abortion group to your client's wife.
12 In that letter, the group referenced baby parts -- that is a quote
13 -- and warned her that it was "watching you and your husband" and
14 that this is "this is only the beginning." And I seek unanimous
15 consent to enter this March 9, 2000, letter.

16 Mrs. Blackburn. So ordered.

17 Ms. Schakowsky. And I believe that there is a connection
18 between the murders at the clinic in Colorado Springs following
19 these deceptive videos where the murderer said, "No more baby body
20 parts," and the repeat of that language and the repeat of the false
21 accusations and the collection of names, a database of names of
22 people involved in research and in clinics is dangerous. It is
23 dangerous. We should not be doing that in the United States of

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1 America, and I yield back.

2 Mrs. Blackburn. The gentlelady's time has expired.

3 I yield to Ms. Black for five minutes.

4 Ms. Black. Thank you, Madam Chair, and I thank the panel
5 for being here today. I do want to focus on Exhibit G, on who
6 bears the responsibility for the tissue procurement chart. As
7 a nurse, I am well aware of how important it is to follow
8 procedures, especially in performing your duties when you are
9 caring for a patient that has trusted you as a care provider for
10 their medical treatment.

11 So let's walk through the day -- a day in the life of a
12 procurement tech. And if you will please turn to Exhibit C for
13 this question. In Exhibit C4, you will see that the tech gets
14 an email from -- gets an email like the one that is on C4, and
15 she reads the order for certain baby body parts, including the
16 gestation period, and knows what she needs to harvest for that
17 day. And I want to reference the second from the bottom line it
18 says that she will need a brain, 16 to 20 -- excuse me, 16 to 18
19 weeks, and complete but can be in pieces. So she has a very
20 specific tissue that she is looking for.

21 Now, if we can turn to C9, Exhibit C9, and then she informs
22 the abortion clinic staff of what she will be procuring on that
23 day. And we actually see there on the first line where she

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1 communicates with the assistant manager, says, "Upon arrival,
2 inform the staff clearly of what you are procuring for the day."

3 So let's follow on, then, with Exhibit C5. The procurement
4 tech then reviews the medical files, which is another subject of
5 whether this is a HIPAA violation, whether she has the rights to
6 be looking at those files of the patients to learn their names
7 and the gestation time of their baby, and she records this in a
8 gestation tracking log, essentially matching the patient with her
9 needs, not the patient's needs but with her needs of what she has
10 been given as her job for the day.

11 Let's next turn to Exhibit Number 8. Next, the procurement
12 office -- the procurement tech approaches the patient waiting for
13 this abortion, and many times this is a young woman who is afraid,
14 not always certain about what she is doing, and needs advice and
15 counseling, but that is not what we see her getting here. She
16 doesn't have -- this tech doesn't have much time, and she must
17 match her orders with the patient who are at the right gestation
18 time.

19 So she asks for the patient by name, and then she consents
20 with them to donate by saying that her baby tissue is about curing
21 for potential diseases, such as diabetes, Parkinson's, and heart
22 disease.

23 And I want to also reference the second paragraph here where

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1 she actually says that the law in the state of California, which
2 is where this is being done, requires that the tissue from your
3 procedure be incinerated. If you go and look at the law there,
4 you do -- she is leaving one thing out. She could offer to this
5 mother to actually bury this baby, but that is left out.

6 She is given I think decisions that are very difficult,
7 either you are going to incinerate this baby, or you are going
8 to give this baby up for research. I think that you certainly
9 should be counseling and giving all options to this young woman
10 who is in a very difficult situation in making that decision.

11 Now let's turn to Exhibit C12 and then after that C13, because
12 after the abortion the procurement tech collects the tissues and
13 procures the baby body parts needed. She carries all of her
14 supplies with her, and you will see here in this particular exhibit
15 that she has very detailed instructions about what she is putting
16 these body parts into. So this is not coming from the abortion
17 clinic. This is actually coming from the procurement agency that
18 she is working for.

19 And then the tissue tech then arranges for the delivery. We
20 can see that that is by FedEx. It is clear on the first exhibit
21 and also on this one about who is paying for the delivery of this,
22 not only the test tubes, and so on, that she will be using to put
23 the specimen in.

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1 So let's go back again to Exhibit G where we see here in
2 Exhibit G a blank on where the expenses are for the abortion clinic
3 because, as I walked you through her day, there is nothing to
4 indicate that the abortion clinic has incurred any expenses.

5 So let me ask you, Mr. Lennon, if you were to walk through
6 this, how does this comprehensiveness of the tissue tech's work
7 inform your thinking about whether the abortion clinic is
8 profiting from the sale of baby body parts?

9 Mr. Lennon. Thank you. I did consider that in my analysis
10 here, and so the question that was raised earlier in the
11 parliamentary question by the representative from New York was
12 that maybe there is a conversation, and in this case there was
13 a conversation. But then the payment should be maybe for that
14 conversation in the processing, because that is the only thing
15 I see where the abortion clinic would have any cost incurred for
16 that conversation, not a per tissue -- price per tissue payment.
17 That informs me that we are talking about the sale of a part and
18 not some reasonable cost.

19 The other I think attack that a defense counsel -- which I
20 now do -- would say is, well, they are also involved in the
21 processing because, you know, the client, the patient is there,
22 but the abortion itself is not the processing of the tissue. It
23 is the creation of the tissue through the destruction of a human

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1 life.

2 So I think there is really no argument I saw from any of this
3 that the abortion clinic had any other costs. They are getting
4 a per tissue payment.

5 Ms. Black. Thank you, Mr. Lennon. I yield back.

6 Mrs. Blackburn. The gentlelady's time has expired.

7 Ms. DeGette, you are recognized for five minutes.

8 Ms. DeGette. Thank you so much, Madam Chair. As a former
9 litigator myself, there is nothing I like better than a panel of
10 lawyers. I have a series of questions that I would prefer a yes
11 or no answer, if I may,

12 The first question I have for the panel is, we received a
13 packet of documents from the majority. I believe I have seen you
14 all referring to it during this hearing in a binder. So my first
15 question is: have you seen these documents before today's
16 hearing? Ms. Clayton, yes or no?

17 Ms. Clayton. Yes.

18 Ms. DeGette. Mr. Raben?

19 Mr. Raben. Yes.

20 Mr. Lennon. Yes.

21 Mr. Norton. Yes.

22 Ms. Foster. Yes.

23 Mr. Sukhia. Yes.

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1 Ms. DeGette. Thank you. And did you personally author any
2 of these documents? Ms. Clayton?

3 Ms. Clayton. No.

4 Mr. Raben. No.

5 Mr. Lennon. No.

6 Mr. Norton. No.

7 Ms. Foster. No.

8 Mr. Sukhia. No.

9 Ms. DeGette. Have you spoken with anyone who authored any
10 of the documents about the information that the documents contain?

11 Ms. Clayton. Not to my knowledge.

12 Mr. Raben. No.

13 Mr. Lennon. Not to my knowledge.

14 Mr. Norton. Not to my knowledge.

15 Ms. Foster. Not to my knowledge.

16 Mr. Sukhia. Maybe. But I don't know.

17 Ms. DeGette. Who have you spoken with, then?

18 Mr. Sukhia. Just the folks who contacted --

19 Ms. DeGette. Do you have names?

20 Mr. Sukhia. Of the folks -- March Bell, and I think that
21 might be it.

22 Ms. DeGette. And that is from majority staff?

23 Mr. Sukhia. Yes.

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1 Ms. DeGette. Thank you. Now, for the documents that are
2 listed in the index that accompanied the packet as coming from
3 a "procurement business," have you spoken with that procurement
4 business about the documents? Ms. Clayton?

5 Ms. Clayton. No.

6 Ms. DeGette. Mr. Raben?

7 Mr. Raben. No.

8 Mr. Lennon. No.

9 Mr. Norton. No.

10 Ms. Foster. No.

11 Mr. Sukhia. No. No, and that is why there needs to be --

12 Ms. DeGette. Now --

13 Mr. Sukhia. -- an investigation.

14 Ms. DeGette. Excuse me. Now, do you have any firsthand
15 knowledge of how the procurement business in question created the
16 documents used in today's exhibits? Ms. Clayton?

17 Ms. Clayton. Absolutely no.

18 Ms. Foster. No.

19 Mr. Lennon. No.

20 Mr. Norton. No.

21 Ms. Foster. No.

22 Mr. Sukhia. No.

23 Ms. DeGette. And for the documents that are listed as

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1 staff-created, for example, Exhibits B4 and B5, did the Republican
2 staff discuss those documents with you? Ms. Clayton?

3 Ms. Clayton. No.

4 Ms. Foster. No.

5 Mr. Lennon. Could you remind me what exhibits you are
6 talking about?

7 Ms. DeGette. Well, the exhibits like the charts that were
8 clearly staff-created.

9 Mr. Lennon. No.

10 Mr. Norton. No.

11 Ms. Foster. No.

12 Mr. Sukhia. I think -- I think we did discuss that.

13 Ms. DeGette. You did discuss that with --

14 Mr. Sukhia. I think the staff member indicated that those
15 are --

16 Ms. DeGette. Did they tell you the documents, sir, that
17 formed the foundation of those?

18 Mr. Sukhia. No. The nature of --

19 Ms. DeGette. Thank you very much.

20 Mr. Sukhia. -- their -- well, the --

21 Ms. DeGette. My last question, do you have any firsthand
22 knowledge of what documents and facts the majority staff relied
23 upon in the staff-created documents? Ms. Clayton?

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1 Ms. Clayton. Absolutely no idea.

2 Mr. Raben. No.

3 Mr. Lennon. No.

4 Mr. Norton. Yes.

5 Ms. DeGette. Okay. And how do you know that, if you didn't
6 talk to the staff, Mr. Norton?

7 Mr. Norton. The exhibits that were provided to me obviously
8 support the --

9 Ms. DeGette. Well, take a look --

10 Mr. Norton. -- summary of the documents that you --

11 Ms. DeGette. -- Mr. Norton, at Exhibit B5 --

12 Mr. Norton. -- have identified --

13 Ms. DeGette. No. I am talking about --

14 Mr. Norton. -- Ms. DeGette.

15 Ms. DeGette. -- the staff --

16 Mr. Norton. I am just trying to answer you question.

17 Ms. DeGette. Mr. Norton, I am talking about the
18 staff-created documents like the charts. Did they tell you what
19 data they used in creating the staff-created documents?

20 Mr. Norton. That is not what you asked, but the answer to
21 that --

22 Ms. DeGette. Yes, it is what I asked.

23 Mr. Norton. -- is no.

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1 Ms. DeGette. Thank you. Ms. Foster?

2 Ms. Foster. No.

3 Mr. Sukhia. No.

4 Ms. DeGette. Thank you. Now, Mr. Raben, I want to ask you
5 a couple questions. Given that no witness on the panel has
6 firsthand knowledge of how these exhibits were created or the
7 underlying facts captured in any of them, do you think it is
8 appropriate for the witnesses to speculate about possible
9 criminal misconduct based on those documents?

10 Mr. Raben. I think calling it speculation is entirely
11 accurate. It would be pure speculation. It wouldn't be
12 probative.

13 Ms. DeGette. Now, you heard in his testimony, you heard Mr.
14 Lennon testify that not -- based on his experience as a prosecutor,
15 that he believed that these documents, in and of themselves, not
16 only establish probable cause but proof beyond a reasonable doubt.
17 What is your opinion of that analysis?

18 Mr. Raben. I would be a little frightened if that were the
19 regime in which --

20 Ms. DeGette. Why?

21 Mr. Raben. -- we live.

22 Ms. DeGette. Why?

23 Mr. Raben. Well, several reasons. One, the context in

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1 which all of these facts come, and I don't have to go back to 2000,
2 although I do think that is illustrative, just in the last --

3 Ms. DeGette. If you can just be brief, I only have five
4 minutes.

5 Mr. Raben. There has been a volume of inaccurate and
6 deceptive information thrown at committees and the media about
7 this issue. If I were an investigator or prosecutor looking at
8 it, I would be extremely skeptical, and I want to know more before
9 I proceeded.

10 Ms. DeGette. And wouldn't you want to bring in the people
11 that actually created those documents --

12 Mr. Raben. Clearly.

13 Ms. DeGette. -- and put them under oath?

14 Mr. Raben. Yes.

15 Ms. DeGette. Thank you. Now, Madam Chair, the reason why
16 I am kind of stuck on this is because if people are selling fetal
17 tissue in violation of the law, we need to get to the bottom of
18 it. We need to find it out. But we can't just have some witch
19 hunt based on some things that were taken off of screenshots and
20 off of documents and charts created by staff.

21 And I will tell you, even though 12 states, including my home
22 state of Colorado, by Attorney General Cynthia Coffman, who is
23 a Republican, who investigated these claims Mr. Norton was talking

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1 about against Planned Parenthood of the Rocky Mountains, and found
2 no cause of action to investigate, even though 12 states have
3 investigated and found there was nothing, if you want to send it
4 to the Department of Justice for investigation, I will guarantee
5 you they won't make up little charts with their staffs.

6 They will get to the bottom of it with original documents,
7 and I suggest that is what you should do if you think there is
8 a criminal violation.

9 I yield back.

10 Mr. Norton. That is not correct about Colorado Attorney
11 General Coffman, Ms. DeGette.

12 Mrs. Blackburn. The gentlelady yields back. Her time has
13 expired.

14 Dr. Bucshon, you are recognized for five minutes.

15 Mr. Bucshon. Thank you. Mr. Norton, do you want to expand
16 on that about the Attorney General quickly?

17 Mr. Norton. Yes. Attorney General Coffman has not
18 investigated the allegations of Rocky Mountain Planned Parenthood
19 or other Planned Parenthood facilities around the country in
20 trafficking in baby parts of bodies.

21 She has taken the position she has no authority to
22 investigate the matter whatsoever.

23 Mr. Bucshon. Than you.

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1 Mr. Norton. Unless asked by the Governor to do so, with the
2 Governor as a --

3 Ms. DeGette. Will the gentleman yield?

4 Mr. Norton. -- supporter of --

5 Mr. Bucshon. I will not yield.

6 Ms. DeGette. Well, then, I guess we won't get to the truth
7 of it.

8 Mr. Bucshon. Thank you. A couple things. First of all,
9 you know, the indictment in Texas was for using a fake ID. And
10 I am the dad of a couple of college students, and I can tell you,
11 you know, half the college campuses would be indicted over that.

12 Also, it was stated that researchers are losing money on this
13 fetal tissue. If they are losing money, how are they losing money
14 if there is not a financial transaction?

15 The other thing is, I agree that past investigations are
16 completely irrelevant to today's discussion. You know, if that
17 was the case, we would never investigate anything. And the other
18 thing is, the person in Colorado who tragically murdered some
19 people had very severe mental illness, and that was what was --
20 impacted that situation, which is tragic.

21 During the time of the 1993 NIH Revitalization Act, everyone
22 had high hopes about fetal tissue transplantation. Just so you
23 know, I was a doctor before I came to Congress. Unfortunately,

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1 that didn't work out. And so in reference to this particular
2 procurement agency, which has been mentioned multiple times by
3 the minority, this whole section of the Act was passed to reverse
4 the ban on fetal tissue transplantation.

5 The statute which applies to all fetal tissue allows
6 reasonable payments associated with transportation,
7 implantation, processing, preservation, quality control, or
8 storage of human fetal tissue. I know a little bit about this
9 because I was a doctor, and it appears to me that all of these
10 are upstream activities from the abortion clinic in reference to
11 this particular full service procurement agency.

12 So the question is is I am going to -- I will start with Mr.
13 Lennon. Assuming that that is correct, under this particular
14 procurement agency we are discussing today, do you see any
15 language in the statute that forms the basis to reimburse the
16 abortion clinic for any costs at all?

17 Mr. Lennon. I don't -- the statute itself doesn't delineate
18 between the two, but I would want to quickly respond to Mr. Raben.
19 My written testimony submitted makes clear that there were
20 assumptions made, that all this evidence is admissible in court,
21 and that an ethical prosecutor would also have storytellers,
22 either credible insiders or people who are compelled to testify
23 to support this.

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1 So my analysis -- and the question I think was unfair. My
2 written testimony points out that this evidence needs to be
3 corroborated.

4 Mr. Bucshon. Understood.

5 Mr. Lennon. But I do think that if the abortion clinic was
6 able to show that there were reasonable costs that were delineated
7 there, and I have seen no evidence of that, then that would be
8 complying with the statute. But I didn't see that in any of the
9 exhibits I was asked to review, and that is the basis of my opinion.

10 Mr. Bucshon. Mr. Norton?

11 Mr. Norton. Yes, I would agree with that. I think that
12 there are a fair number -- first of all, let me say that in our
13 system of criminal justice, each and every individual is presumed
14 innocent unless and until proven guilty beyond a reasonable doubt.
15 Even those clients Ms. DeGette would bring to my office when I
16 was United States Attorney, they would be presumed to be innocent
17 as well from the get-go.

18 Mr. Bucshon. Agreed.

19 Mr. Norton. And so that would be the case here, and so there
20 are a number of unanswered issues I think that a competent
21 investigation could and should pursue. For example, how much
22 does the abortion clinic receive for an abortion from a client?
23 And what is the source of that? Is it from the patient, from

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1 insurers, from Medicaid, from other sources?

2 What, if any, of the services that are provided to the
3 abortion client -- that is, the woman upon whom the abortion is
4 committed, are unbundled and billed to insurers, including
5 Medicaid? What is the actual cost of the abortion? What are the
6 amounts over and above that cost? And where do they go, and how
7 are they accounted for? In other words, what is happening to
8 those profits?

9 How does the abortion clinic notify the procurement business
10 or procurement business technician of the fact of abortions? It
11 appears from the materials we have provided that the procurement
12 business technician is actually embedded in the abortion clinic
13 and is given access to confidential medical records before the
14 patient even shows up on the scene, so that that technician can
15 select what organs the company seems to want at that point in time.

16 Mr. Bucshon. I am running out of time, so I am going to have
17 to -- Mr. Sukhia, you wanted to comment on something earlier.
18 Real quickly.

19 Mr. Sukhia. Well, thank you very much. The federal
20 provision is a federal provision. So all the talk about, well,
21 states having looked at this --

22 Mr. Bucshon. By the way, the states that looked at it, the
23 services in question here weren't provided in the first place.

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1 And I will speak for Indiana, so, obviously, nothing was done wrong
2 because that wasn't even part of the equation.

3 Mr. Sukhia. Well, so there are different jurisdictions, and
4 from a federal standpoint, from the standpoint of a federal
5 prosecutor, he is not going to be swayed by what some states
6 decided was or wasn't a violation of their state statutes.

7 Mr. Bucshon. Fair enough. I yield back.

8 Mrs. Blackburn. The gentleman's time has expired. Ms.
9 Speier, you are recognized for five minutes.

10 Ms. Speier. Thank you, Madam Chair. You know, this hearing
11 belongs in a bad episode of House of Cards. I am sure Frank
12 Underwood is lurking somewhere here in the room. In fact, this
13 hearing is literally based on a house of cards and the exhibits
14 being used as a foundation are, in all likelihood, the product
15 of a theft carried out by someone who is now under indictment in
16 Texas and whose home has been the subject of a court-ordered search
17 in California.

18 Is this hearing really going to proceed based on stolen and
19 misleading documents? Even Frank Underwood would be blushing at
20 this point. This committee's sole purpose is to hold fake trials
21 of citizens and companies that comply with laws, but not with the
22 political agenda of Republicans who want to restrict women's
23 health care. Twelve states and four Congressional committees --

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1 one Senate, three House -- have already investigated the videos
2 released by the so-called Center for Medical Progress last summer
3 and found absolutely no evidence of wrongdoing.

4 The same cannot be said for David Daleiden and his
5 associates. This so-called committee is the very definition of
6 a kangaroo court, a mock court that disregards the rules of law
7 and justice to validate a predetermined conclusion. But this
8 mock court has real consequences. While we are focusing on what
9 goes on inside a woman's uterus, we are completely ignoring what
10 happens to babies and children outside of them.

11 How else can you explain why this Panel is holding this
12 hearing while children go hungry and research on pediatric cancer
13 is desperately in need of more research dollars? What about the
14 health implications for our children if we stifle fetal tissue
15 research? After all, fetal tissue research was key to the CDC's
16 recent confirmation of the link between Zika and microencephaly.
17 This is the first step in developing treatment options and
18 vaccines to stop the spread of Zika.

19 Considering Zika-affected infants suffer from brain damage,
20 severe seizures, and other medical problems, why aren't we talking
21 about protecting those infant lives. If this committee succeeds
22 in abusing medical professionals so severely that they abandon
23 promising research, not a single life will be saved, but many,

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1 many will be lost. Perhaps we should propose a new name for this
2 committee, the Select Investigative Panel on Stopping Research
3 and Letting People Die.

4 Now, let me ask Mr. Raben, given that no witnesses on the
5 panel have firsthand knowledge of how these exhibits were created,
6 or the underlying facts captured in any of them, do you think it
7 is appropriate for the witnesses to speculate about --

8 Mr. Bucshon. Will the gentlelady yield?

9 Ms. Speier. -- criminal misconduct based on those
10 documents?

11 Mr. Bucshon. Madam Chairman?

12 Mrs. Blackburn. The gentleman is recognized.

13 Mr. Bucshon. I take personal offense to being -- for it
14 being said that, as a physician, I am here to allow people to die.
15 I would like those words stricken from the record. It is a
16 personal attack on me as a physician.

17 Ms. Speier. You were not referenced by name.

18 Mr. Raben, will you please respond?

19 Mr. Bucshon. I don't -- I would quibble with -- inquiry on
20 that?

21 Ms. Speier. You have to be referenced by name.

22 Mrs. Blackburn. If the gentlelady will yield.

23 Ms. Speier. I will yield.

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1 Mrs. Blackburn. Thank you. You would have to be referenced
2 by name. And I appreciate the inquiry, but you would need to be
3 referenced by name.

4 Mr. Bucshon. Thank you. I would just like it part of the
5 record that I am offended by that comment. Thank you.

6 Mrs. Blackburn. The gentleman is so noted.

7 Ms. Speier, you are recognized.

8 Ms. Speier. Mr. Raben?

9 Mr. Raben. I can't -- thank you. I can't quibble with
10 speculation. It is important that everybody remember that it is
11 just speculation, that this is not probative evidence of anything.
12 We have got very, very bright, experienced people speculating.

13 Ms. Speier. So to Mr. Lennon, Madam Chair, even in her
14 opening remarks, referenced "horrible videos." These videos
15 have 30 minutes missing from them. The doctor interviewed said
16 10 times that Planned Parenthood does not profit from tissue
17 donations, and Ms. Daleiden -- Mr. Daleiden sent a proposed
18 transfer agreement with a specific clause, a compensation clause,
19 to Planned Parenthood when he was trying to negotiate a contract.

20 Planned Parenthood struck that particular compensation
21 clause, and then Mr. Daleiden didn't pursue it. Is that a
22 reputable person on which to base an entire committee hearing?

23 Mr. Lennon. I have never met the gentleman that you refer

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1 to. In fact, I don't know what House of Cards or Frank Underwood
2 is either. So, but I will tell you this. There is a difference
3 -- there is a difference between what a discredited whistleblower,
4 like Ms. Clayton unfortunately had to deal with, as opposed to
5 admissions made by an agent of a potential target.

6 So those are apples and oranges. I have not purported --
7 I am not saying I have watched all of the videos. I have seen
8 some excerpts. I am just talking as an evidentiary matter there
9 is a huge difference between a whistleblower who is discredited
10 and an agent or director or employee or officer of a targeted
11 industry. Those are admissions that could be admissible in
12 court.

13 So I think -- again, I don't want to opine. I have not looked
14 at all of the videos. I don't even know where they were all --

15 Ms. Speier. Thank you. My time has expired.

16 Mr. Lennon. Thank you.

17 Mrs. Blackburn. The gentlelady yields back.

18 Dr. Harris, you are recognized for five minutes.

19 Mr. Harris. Thank you very much.

20 Look, I am sorry, I am not a lawyer. I am a doctor. I have
21 worked, you know, in NA-sponsored research and at Johns Hopkins.
22 And I want to ask today not about profit, because, look, I think
23 the record speaks for itself. All of the costs were covered by

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1 the procurement companies. The record speaks for itself.

2 What I want -- you know, on Exhibit B2, the procurement
3 company's brochure, it says that, you know, these are
4 IRB-certified consents. Exhibit C8, page 2, at the bottom says
5 BioMed IRB approved, and in fact I am going to ask a legal question
6 here because, you know, IRB approval is very important in human
7 research.

8 And if you are looking at whether someone is out to make a
9 profit, they are going to cut corners, they are going to save a
10 dollar here or there, and so I am going to ask a question about
11 specifically this company called BioMed IRB.

12 And I am going to ask, Madam Chair, to enter into the record
13 two letters from the Department of Health and Human Services
14 regarding the company, one from March 29, 2012, the other from
15 January 16, 2013. The March 29, 2012, letter actually is a letter
16 to that company basically asking it to cease and desist from doing
17 approvals or, in fact, anything being obtained under one of their
18 approvals because of the shoddy work that this apparently one
19 room, single owner, IRB mill. That is the best way you can call
20 it. You can look at -- look, you can go to their website, you
21 can see their price list.

22 You know, I have submitted things to an IRB. They guarantee
23 that if you have it in by Tuesday before noon, you are actually

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1 going to have it before the IRB and approved that week basically.
2 But for \$1,900 more, you can actually submit it after noon on
3 Tuesday and have it approved that week. It is unbelievable.

4 But I want to ask a specific legal question, because if in
5 fact the company continued to obtain specimens under that IRB
6 approval between March 29 and January 16, 2013, who is liable for
7 that, if in fact when that IRB -- when the FDA said, "You cannot
8 obtain specimens" told the IRB that that is true. Mr. Lennon,
9 who would be responsible for that?

10 Mr. Lennon. I don't think I am -- I don't think I have a
11 foundation to answer that question.

12 Mr. Harris. Okay. Let me ask you a question. Is it a valid
13 question to ask that, in fact, if the FDA had said you can't obtain
14 tissue -- you can obtain anything under the IRB approvals that
15 you have had until you have responded to us and they -- and the
16 letter came back almost a year later.

17 If in fact a procurement company was obtaining tissue in that
18 period of time, would that be a problem in -- because Title 45
19 of the Regulations Part 46 make it pretty clear you need IRB
20 approval. And, in fact, downstream federal research, where an
21 IRB further downstream depended upon that information in that IRB
22 to be accurate. In other words, if I was obtaining, as a
23 researcher, tissue from this company, my IRB assumes that the

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1 previous IRB approval is actually valid, that in fact that company
2 represents they have IRB approval.

3 If they don't, is it valid to actually look downstream and
4 see whether those IRBs were notified downstream, whether in fact
5 those researchers were notified that this IRB approval in fact
6 had been suspected by the FDA? Is that valid? Is that something
7 we should look into? Mr. Norton, something we should look into?

8 Mr. Norton. I think that is a very valid question, frankly.
9 And as I looked at the exhibits in preparation for this hearing,
10 that was a question that I had is exactly what was the effect of
11 and the date of and the integrity of the IRB approval process.
12 As I understand Exhibit C15, it is a document that is being
13 provided to the woman who is --

14 Mr. Harris. Yes. Let me go on and --

15 Mr. Norton. -- obtaining the abortion. So I think it is
16 a valid -- because essentially it is a false statement by --

17 Mr. Harris. And let me go further to a false statement. On
18 the videos, pretty clearly a doctor says, "We modify the procedure
19 to get better body parts." Pretty clearly. I mean, look, this
20 is -- there is no doctoring going on here. This is you look at
21 it -- and I urge anyone looking at this hearing, go look it up.
22 The doctor says, "We alter it to preserve the calvarium, so we
23 don't crush the calvarium, so we can actually get the amount of

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1 money we are going to charge for it."

2 The federal regulations say you actually have to tell the
3 patient if you are going to change a procedure. Now, I look at
4 the consent forms, which is Exhibit C8, page 2, it says
5 specifically your abortion procedure will not change in any way.
6 We look at one of the consent forms that was actually entered into
7 the record last time which says that your procedure will not be
8 changed in any way.

9 If in fact the procedure is changed in any way, is that a
10 valid -- is that a violation of the IRB-approved consent which
11 is necessary for federal research dollars? It is actually
12 necessary for any research to be conducted downstream. Is that
13 a violation of that, if you in fact modify the procedure after
14 the patient signed a consent that said procedure will not be
15 modified?

16 Mr. Norton. Yes. I think that is also a violation of the
17 statute itself.

18 Mr. Harris. Thank you very much.

19 Mr. Raben. May I --

20 Mr. Harris. I yield back.

21 Mr. Raben. May I just get in there to question the premise?

22 Mr. Harris. My time has expired. I am sorry.

23 Mr. Raben. Well, mine has not. The premise of --

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1 Mrs. Blackburn. The gentleman's time has expired.

2 Okay. Let's -- Mr. Raben, go ahead.

3 Mr. Raben. I was going to question the premise of the "I
4 don't know a thing about the consent forms at IRB." I never work
5 on IRB, but your premise that the videos were not -- this part
6 of the video was not distorted is not accurate. Every aspect of
7 the videos that were put out in the public were heavily edited,
8 deceptive, and distorted, and independent analysis finds -- and
9 I don't think there is a sane prosecutor in the country that would
10 feel comfortable putting people who created those videos on a
11 witness stand in a case, because they would be impeached.

12 Mrs. Blackburn. Ms. DelBene, you are recognized for five
13 minutes.

14 Ms. DelBene. Thank you, Madam Chair. This hearing and,
15 frankly, this entire investigation is nothing more than an attempt
16 to limit a woman's right to choose under the false guise of illegal
17 tissue sales. And this isn't the first time we have seen this.

18 As Ms. Clayton stated, 16 years ago the House held a hearing
19 on nearly identical allegations. Those claims, also based on
20 secretly recorded videos by anti-choice extremists, were found
21 to be fabricated and patently false. In fact, much of the
22 so-called evidence that was used back then mirrors what we are
23 seeing right here today.

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1 In that hearing, the majority relied upon a whistleblower
2 who claimed that the entities were profiting from illegal tissue
3 sales. However, while testifying, the whistleblower
4 acknowledged that he had fabricated his statements and lacked any
5 knowledge of illegal activity.

6 The Department of Justice, though, still investigated the
7 person in question, Dr. Miles Jones, and found that after a
8 thorough review of the issues no violations of federal statutes
9 were found. So, Mr. Raben, if the Justice Department had
10 uncovered evidence that Dr. Jones had violated the federal laws
11 on fetal issue donation, the statute, in particular Section
12 289g-2, would have permitted the Department of Justice to
13 prosecute. Is that correct?

14 Mr. Raben. Yes.

15 Ms. DelBene. And the majority appears to be saying that the
16 term "valuable consideration" isn't fully defined and, as a
17 result, the DOJ is incapable of enforcing the law. In your
18 opinion, does the Department of Justice lack the clarity that they
19 need to enforce the law?

20 Mr. Raben. No.

21 Ms. DelBene. And if the Department had actual evidence of
22 federal violations in those cases, the DOJ would enforce the law,
23 would it not?

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1 Mr. Raben. I have complete confidence that the men and women
2 of the Department of Justice know what they are doing and take
3 issues like this seriously. Yes.

4 Ms. DelBene. So is it fair to say, then, that there really
5 isn't a problem with the statute in the 2000 case regarding the
6 Miles Jones investigation but, rather, a lack of facts to support
7 the prosecution?

8 Mr. Raben. That would be my inference, yes.

9 Ms. DelBene. And do you think we are in a similar situation
10 from what you have seen so far today?

11 Mr. Raben. Yes.

12 Ms. DelBene. So do you think it is possible that the lack
13 of prosecutions that others have referred to over the years under
14 both Republican and Democratic administrations, signals that
15 there aren't widespread violations of the law as we have heard
16 alleged here today?

17 Mr. Raben. That is right.

18 Ms. DelBene. So then, once again, I think this hearing is
19 really another recycled attempt to show wrongdoing when there is
20 none or there is no evidence that there has been done, and we are,
21 once again, watching history repeat itself.

22 You know, I would also point out that after the investigation
23 in 2000 women's health care providers were also subjected to false

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1 allegations -- or false accusations on seven separate occasions
2 between 2000 and 2013, all based on so-called evidence from
3 anti-choice extremists. I don't know, Ms. Clayton, if you have
4 any comments you want to make about those allegations that took
5 place afterwards.

6 Ms. Clayton. I would be glad to. The false allegations and
7 the attempts to stir up crazy people like Robert Dear have been
8 ongoing. I think they have been ceaseless. In fact, anyone who
9 saw Mark Crutcher talking at the Cleveland Right to Life last month
10 saw him brag about stirring up people like Daleiden who will go
11 out and do his business by any means necessary. How Crutcher has
12 avoided prosecution, I don't know, but I think it is because he
13 gets other people to lie for him.

14 These efforts by the radical anti-choice groups like Life
15 Dynamics, Army of God, have been endless as far as I can tell,
16 and they threaten the lives of everyone who uses a clinic for --
17 and the clinics, by the way, don't provide just abortions, they
18 provide a host of health services. The people who were murdered
19 in Colorado weren't getting abortions. It is just -- it is a
20 terrible threat to the health and safety of the nation when these
21 people are allowed to get away with that.

22 Ms. DelBene. You know, the majority seems determined to use
23 this taxpayer-funded panel to continue pursuing the latest series

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1 of false, unsubstantiated allegations, even though they have been
2 debunked by everyone who has looked at them, including state
3 attorneys general as well as committees right here in Congress.

4 So the truth is that the investigation, and this particular
5 investigation, isn't really about fact-finding at all. As we
6 have talked about, we haven't had witnesses who can speak to the
7 facts here. So these are just baseless allegations made by Daniel
8 Daleiden, and it is just another attempt, I would say, to smear
9 women's health care providers with falsehoods and fabrications.
10 Women definitely deserve better.

11 I yield back, Madam Chair.

12 Mrs. Blackburn. I thank the gentlelady.

13 Mr. Duffy, you are recognized for five minutes.

14 Mr. Duffy. Thank you, Madam Chair. Is it fair to say that
15 the whole panel today thinks that we should look for the truth?
16 Anybody disagree with that? Raise your hand if you disagree with
17 that.

18 Okay. And we should actually enforce the law. Does anybody
19 disagree with the fact that we should enforce the law? Because
20 we all -- all right. Great. We are starting out very well.

21 I have heard some conversation about how the Department of
22 Justice and investigations and so just to be clear on this, Ms.
23 Clayton, has there been an FBI investigation into this issue?

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1 Ms. Clayton. I am not privy to that sort of thing. I have
2 no idea.

3 Mr. Duffy. Okay. So how about this? Is there a lead DOJ
4 attorney that has been assigned to lead the investigation into
5 this matter?

6 Ms. Clayton. Mr. Duffy, I am a civil litigator. I have no
7 knowledge or access to that sort of information --

8 Mr. Duffy. But just --

9 Ms. Clayton. -- which I understand has to be kept -- I don't
10 think it is allowed to be shared with people like me.

11 Mr. Duffy. So you are not aware of any lead attorney at the
12 Department of -- does anybody on the panel know of a lead attorney
13 at the Department of Justice who is leading this investigation?

14 Mr. Sukhia. No. I have heard nothing of --

15 Mr. Duffy. I haven't either. I want to have the panel refer
16 to Exhibit 2 -- I am sorry, Exhibit B2 and B3. Starting with B2,
17 I believe that this was a document that was received from a
18 national abortion provider conference, and it seems to indicate
19 that there could be financial profitability for an abortion
20 provider if they engage with the blocked out middle person, right?

21 So if we look at the statute, it prohibits valuable
22 consideration to be paid for the transfer of body parts, is that
23 right?

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1 Mr. Sukhia. Absolutely.

2 Mr. Duffy. And so if someone is getting reimbursed for a
3 body part, it is pretty tough to make a profit, isn't it? If you
4 are just getting reimbursed, you can't make money. Am I missing
5 something, Mr. Sukhia?

6 Mr. Sukhia. I agree, totally.

7 Mr. Duffy. Okay. So but if you are getting more than just
8 reimbursement, you can make a profit.

9 Mr. Sukhia. Yes.

10 Mr. Duffy. Does that concern anybody on the panel that then
11 maybe the DOJ and the FBI isn't looking into this? Mr. Norton?

12 Mr. Norton. I think that is highly concerning. That is why
13 we are here, to encourage this panel to do that.

14 Mr. Duffy. I would agree with you.

15 Ms. Foster, I have heard a lot of my friends across the aisle
16 talk about this being an issue of women's health care. In regard
17 to Section U.S.C. -- I am sorry, 42 U.S.C. Section 289, this is
18 a section I believe that talks about valuable consideration for
19 fetal body parts. Is there anything in that section that you are
20 aware of that relates to women's health care?

21 Ms. Foster. There isn't. And I would add that as a woman
22 and, in fact, as a post-abortive woman, I am deeply offended that
23 abortion clinics are permitting improper access by procurement

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1 businesses to really exploit us, to potentially place us under
2 duress, and to put our children on display for sale in the way
3 that chicken livers are in a grocery store. It deeply offends
4 me.

5 Mr. Duffy. Thank you. Ms. Clayton, I am sure you have had
6 a chance to look at Exhibit B2. Is it your testimony that this
7 document has been altered in any way?

8 Ms. Clayton. B2? I have no knowledge of any of these
9 documents. And if these documents are anything like the
10 videotape, I would start with the assumption that they probably
11 have been altered, but I don't have any personal knowledge one
12 way or the other. I never saw them until they were sent to me
13 by email I think it was yesterday.

14 Mr. Duffy. So you are just -- so you have had a chance to
15 look at them since yesterday, you are an impartial witness today
16 who is making assertions that they are probably doctored.

17 Ms. Clayton. No. I said I would start with the assumption
18 that they might be because --

19 Mr. Duffy. Well, take a look at them. Tell me what --

20 Ms. Clayton. -- I have no knowledge of them, nor has anyone
21 in this room given any indication of the source of the document.

22 Mr. Duffy. Look at the document.

23 Ms. Clayton. So as far as I know, they might have been

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1 invented --

2 Mr. Duffy. Ms. Clayton, this is my time.

3 Ms. Clayton. -- just like the videotape had been --

4 Mr. Duffy. I would love to see -- tell the Panel today, what
5 has been doctored in Exhibit B2?

6 Ms. Clayton. Exhibit B2?

7 Mr. Duffy. This is the document that shows that --

8 Ms. Clayton. Let me find it.

9 Mr. Duffy. -- an abortion provider can have financial
10 profitability.

11 Ms. Clayton. Well, actually, no, it doesn't say that at all.
12 This obviously refers to adult tissue as well as any other kind.
13 This is not limited. I looked at B2, sir, and it is clear that
14 this is talking about adult tissue, which is far differently
15 regulated --

16 Mr. Sukhia. That is not true. It is talking about fetal
17 tissue. It is clearly --

18 Mr. Duffy. It says fetal to adult tissue.

19 Ms. Clayton. It says fetal and adult --

20 Mr. Duffy. Right on its face. It wasn't doctored enough.

21 Mr. Sukhia. Stem cell-rich blood.

22 Ms. Clayton. It has been redacted in certain ways that I
23 can't tell what has been redacted.

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1 Mr. Duffy. Right here, fetal DNA.

2 Ms. Speier. Will the gentleman yield?

3 Mr. Duffy. No, I will not.

4 Ms. Speier. Okay.

5 Mr. Duffy. And it also talks about stem cell rich blood and
6 raw materials. Does anybody know when they "raw materials" what
7 that is referring to?

8 Ms. Clayton. Perhaps adult tissue. It certainly applies
9 to both adult and fetal, and I can't tell from the --

10 Mr. Sukhia. Well, even if it does apply to both, it is still
11 an offense because it does apply to fetal.

12 Mr. Duffy. If this document is being sent out during the
13 national abortion provider conference, and they are talking about
14 adult tissue, is that your testimony today, Ms. Clayton, is --
15 and we are not talking about fetal tissue?

16 Ms. Clayton. Is what my testimony?

17 Mr. Duffy. That this document is referring to adult tissue
18 when it is being provided to the appropriate --

19 Ms. Clayton. I have no idea. All I can --

20 Mr. Duffy. -- national abortion provider conference.

21 Ms. Clayton. Sir, all I can tell you is that it is clear
22 from reading this document that it is not limited to fetal tissue
23 and --

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1 Mr. Duffy. One last --

2 Ms. Clayton. -- and, sir, if I may finish answering --

3 Mr. Duffy. One last question. I have one last question.

4 Ms. Clayton. -- the regulation --

5 Mr. Duffy. One last question.

6 Ms. Clayton. -- are entirely different.

7 Mr. Duffy. There has been a lot of conversation on the Hill
8 about --

9 Mrs. Blackburn. The gentleman's time has expired.

10 Mr. Duffy. -- money involved in politics. Has anybody on
11 this panel made any --

12 Mrs. Blackburn. The gentleman's time has expired.

13 Mr. Duffy. -- contribution to any of the members that sit
14 on this panel? If so, raise your hand if you have made a
15 contribution. To anybody on the panel.

16 Mrs. Blackburn. The gentleman's time has expired.

17 Mr. Duffy. I yield back.

18 Mrs. Blackburn. Mrs. Watson Colman, you are recognized for
19 five minutes.

20 Mrs. Watson Colman. Thank you very much. It is often said
21 that Congress writes the laws and the executive branch enforces
22 them. In 2000, when very similar allegations about tissue
23 procurement organizations were made based on explosive video

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1 interviews, the Justice Department was asked to investigate.

2 Then-Assistant Attorney General Robert Raben -- you, sir,
3 thank you for being here -- responded to a request from Fred Upton,
4 who had inquired about the potential criminal violations of the
5 federal statute against fetal tissue sales. In that letter, the
6 Department noted that based upon a preliminary review of our
7 records, it appears the Department has not received any
8 information -- information meeting our standards for triggering
9 a formal investigation that fetal tissue has been sold for profit.
10 And I ask unanimous consent that a copy of that letter be entered
11 into this record.

12 Mr. Raben?

13 Mrs. Blackburn. So ordered.

14 Mrs. Watson Colman. Thank you, Madam Chair.

15 Mr. Raben, can you explain what the standards for triggering
16 a formal investigation are within the DOJ and why these standards
17 are necessary, and have these standards been met in this instance
18 that we are debating now?

19 Mr. Raben. These standards have not been met.

20 Mrs. Watson Colman. What the standards are.

21 Mr. Raben. Yes.

22 Mrs. Watson Colman. Why should they be met?

23 Mr. Raben. Right.

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1 Mrs. Watson Colman. What triggers this? And are we there
2 now?

3 Mr. Raben. Extremely briefly, there is different levels
4 that all investigative and prosecutive agencies go through.
5 There is an initial investigation, which can be begun with, you
6 know, any credible data. There is a formal investigation, which
7 requires a supervisor to sign off for the use of resources, and
8 then it is working with a prosecutor to figure out whether, with
9 a whole range of criteria, including sustainability of a
10 conviction, are there other jurisdictions that could take it.

11 So I can refer you to the AG guidelines and the FBI
12 guidelines, and I can get that to you subsequently. But to answer
13 your question, it could well be that an agency is involved in an
14 investigation. We have on the record 12 states that have opened
15 an investigation and closed. We have on the record 8 state
16 officials saying they wouldn't even open an investigation based
17 on the evidence that they have.

18 So I wouldn't be surprised if the Department has looked at
19 it and declined. And as I have stated before, the central problem
20 is there is so much duplicity and deception around how so much
21 of this evidence was created that I think it would give most
22 prosecutors pause to go forward with a case.

23 Mrs. Watson Colman. So as in the Daleiden videos, the

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1 deceptively edited videos, and sort of the out-of-contact
2 invoices, would they be enough to trigger a DOJ investigation?

3 Mr. Raben. It would be an investigator and a prosecutor
4 going with incredible caution. He or she would have to find, in
5 my view, probative and credible evidence from other than that
6 source.

7 Mrs. Watson Colman. Right. And so would it involve also
8 determining the validation of the Daleiden investigation -- I
9 mean, allegations?

10 Mr. Raben. It is bad facts. If --

11 Mrs. Watson Colman. So it would be -- I am sorry.

12 Mr. Raben. No, no. Go ahead.

13 Mrs. Watson Colman. Thank you. So it would be important
14 to at least have the conversation with individuals with actual
15 knowledge of the facts contained in any documents under review.

16 Mr. Raben. Yes.

17 Mrs. Watson Colman. Any requests or investigations.

18 Mr. Raben. Yes.

19 Mrs. Watson Colman. Here today you have been asked by my
20 Republican colleagues to opine about possible criminal misconduct
21 based on a slew of documents that were sent to you late Monday
22 afternoon without identification of the author of any document,
23 underlying source of information the documents contained, and

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1 without the benefit of speaking to anyone with firsthand knowledge
2 of that information.

3 Is this, in your opinion, a fair or legitimate way to
4 determine if there has been a violation of federal law?

5 Mr. Raben. No.

6 Mrs. Watson Colman. Madam Chair, unlike the Select Panel's
7 investigation, DOJ must -- must base its investigations on real
8 facts and hard evidence. This Panel has, instead, based its
9 investigation -- and I put that in quotations -- so far on an
10 indicted extremist and his discredited videos, and it is certainly
11 a time for the majority to rely on facts, not inflammatory
12 allegations of anti-abortion extremists.

13 And with that, I would just like to ask Ms. Clayton one
14 question, and that has to do with adult tissue versus fetal tissue.
15 You wanted to say something with regard to that, and I want to
16 give you that opportunity, because it is clear that wherever that
17 particular slide comes from it does refer to both.

18 Ms. Clayton. Okay. From my experience 16 years ago
19 representing a foundation that provided both fetal and adult
20 tissue for medical research, I know a little bit about it. My
21 knowledge is out of date, but among the things I know are that
22 fetal tissue donations are highly, highly regulated, as are
23 donations of fetal or adult for transplants, very highly

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1 regulated.

2 When it comes to adult tissue that is just for research, there
3 are still regulations of course but far fewer. So when I looked
4 at that exhibit, what was it, B or something? I immediately saw
5 they were -- the exhibit, assuming it is a real document, was
6 conflating more things than one. It wasn't just about fetal. It
7 was --

8 Mrs. Watson Colman. It was about a range of services.

9 Ms. Clayton. Yes. And so if you talk about what you can
10 -- if the Amtrak -- if I die on the Amtrak and my liver goes to
11 somebody, you know, they can do a lot of things with that, not
12 highly regulated.

13 Mrs. Watson Colman. Thank you, Ms. Clayton. Thank you, Mr.
14 Raben.

15 Thank you, Madam Chair.

16 Mrs. Blackburn. Thank you. The gentlelady yields back.

17 Mrs. Hartzler, you are recognized for five minutes.

18 Mrs. Hartzler. Thank you, Madam Chairman. Nobody should
19 make a profit from the sale of baby body parts. That is something
20 that is shared by the majority party as well as minority party.
21 I want to remind everybody that back in 1993 when this was first
22 introduced in Congress, the idea of this, Henry Waxman, who
23 introduced the amendment, a Democrat, said it would be abhorrent

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1 to allow for sale of fetal tissue and a market to be created for
2 that sale.

3 And yet today we have seen that the procurement organizations
4 in Exhibit 1, 2, 3, and 4 are receiving \$700 to \$850 per brain.
5 But I want to focus on the abortion clinic's part in this. Could
6 we look at Exhibit D1? Here are the payments that we have obtained
7 to various abortion clinics for these baby body parts. We have
8 Fresno having 38 specimens, and they received \$2,090. Sacramento
9 abortion clinic received \$3,740, San Jose \$3,575.

10 Now, nationwide the Panel investigation has found that there
11 are many more of these middleman procurement organizations, and
12 there are hundreds of abortion clinics. And I remember some of
13 the abortion clinic doctors on the video that Mr. Sukhia
14 referenced talking about making money from the sale of baby body
15 parts, even joking about it.

16 So I want to hear from the former U.S. Attorneys, given their
17 training and experience, how they would investigate the
18 accounting records and anything else to document whether the
19 abortion clinics profited for the sale of baby body parts.

20 So, Mr. Sukhia?

21 Mr. Sukhia. Yes, ma'am. Thank you. I have some
22 experience both on the prosecutive side of this, not just being
23 a former prosecutor for 13 years as an AUSA, and then a few years

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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

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1 allowing procurement businesses into their doors, sharing
2 records, and allowing them to find out some of the most personal
3 health care information imaginable. So that obviously is an
4 extreme concern for me and something that I definitely want
5 investigated.

6 Mrs. Hartzler. Thank you for sharing that. Certainly, we
7 are here because we care about the women, too. Make sure they
8 are not being manipulated or hurt in any way.

9 Thank you. I yield back.

10 Mrs. Blackburn. The gentlelady yields back.

11 Mr. Nadler, you are recognized for five minutes for
12 questions.

13 Mr. Nadler. Thank you, Madam Chair. Just when I think my
14 Republican colleagues cannot find a way to make this investigation
15 more of a farce, we have a farcical hearing like this one. None
16 of the documents the Republicans are showing today contain any
17 evidence of wrongdoing. In fact, these misleading documents,
18 many of which the Republican staff produced themselves with no
19 basis in reality, do not provide any foundation for an
20 investigation of this nature.

21 Cutting and pasting sections of draft contracts that were
22 never signed or formalized, creating charts and graphs with no
23 analytical basis, and printing off random invoices with no

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1 explanation for their contents does not meet the standard of
2 evidence for any court of law, let alone for a Congressional
3 investigation.

4 I would think the Republicans should have learned this lesson
5 after the mess of a hearing in 2000 when a tissue procurement
6 organization, a TPO, then stood accused of profiting from the sale
7 of fetal tissue research. The source of these accusations --
8 heavily edited videos produced by anti-abortion extremists.
9 Some of the same documents we are looking at today were tossed
10 around by the Republicans in 2000 with the same misrepresentation
11 of the facts.

12 As we all know, that hearing fell apart when the key witness,
13 Dean Alberti, the man who accused the TPO of profiting from fetal
14 tissue donations admitted under oath that he had lied in the
15 videos. Suddenly, those invoices and the fee schedules didn't
16 seem like such a smoking gun. Well, they weren't then, and they
17 aren't now, yet here we are again.

18 This hearing is another example of the Republican majority
19 going to extreme lengths to advance their dual agendas of smearing
20 organizations against whom all federal and state investigations
21 have found no evidence of any violations of law, knowing that the
22 smears will endanger the lives of people who work for these
23 organizations, and that is why I have said this committee is worse

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1 than McCarthy investigations because McCarthy endangered
2 people's lives. This committee -- I am sorry, endangered
3 people's jobs. This committee is knowingly endangering people's
4 lives, and their other goal of eliminating women's choices and
5 degrading their doctors.

6 Now, Mr. Raben, I would like to ask you a couple of questions.
7 We just received yesterday -- just yesterday we received a letter
8 from the counsel for StemExpress who informed us, and I quote,
9 "It appears that majority staff may have repurposed
10 unauthenticated, stolen documents illegally obtained by David
11 Daleiden and the Center for Medical Progress, and that some of
12 the majority's exhibits have never appeared publicly, suggesting
13 that perhaps the Select Panel may be receiving so-called evidence
14 directly from Mr. Daleiden or his associates."

15 Does that not call into question the validity of the entire
16 investigation, or at least what the majority appears to be relying
17 on?

18 Mr. Raben. It sounds like bad form, yes.

19 Mr. Nadler. More than bad form, I would think. And what
20 do you think of the refusal by Republicans even to question Ms.
21 Daleiden or to test the credibility and objectivity of his
22 allegations? What should that tell us about this investigation?

23 Mr. Raben. I am not going to comment on the -- on my good

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1 friends across the aisle, their motivation. What I am concerned
2 about is, you know, whether the point of this hearing is to
3 politicize an investigation and to press DOJ to do its job in a
4 way different than they think they ought to do. I think there
5 is a very sad history of that, and it is always dangerous.

6 Mr. Nadler. A history of using Congressional pressure to
7 --

8 Mr. Raben. Yes.

9 Mr. Nadler. -- pressure to press prosecutorial decisions.

10 Mr. Raben. Yes. It is one thing to refer information and
11 to have comity between the branches; it is another to use politics
12 to pressure a particular agent or investigator into doing his or
13 her job.

14 Mr. Nadler. In that connection, isn't this entire hearing,
15 this entire investigation, having no purpose essentially other
16 than to suggest that since it is obviously that these
17 organizations are guilty of what they are being accused of, that
18 the DOJ and the various state investigating agencies have not done
19 their job properly if they haven't brought indictments?

20 Mr. Raben. That is the implication.

21 Mr. Nadler. Thank you. And let me ask you this. We have
22 heard before that Mr. Daleiden was indicted only for a false
23 identification, and every college kid -- or not every, but half

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1 the college kids have false identification, so big deal. But 18
2 U.S.C. Section 1001 criminalizes any personal who knowingly
3 submits false material to Congress in connection with an
4 investigation.

5 And I think, and I would like your comment, from what we have
6 seen and what we have heard in this entire thing, that does seem
7 to be a serious problem, that Mr. Daleiden and the Center for
8 Medical Progress were submitting knowingly false information to
9 Congress, and that is a very serious problem.

10 Mr. Raben. Yes.

11 Mr. Nadler. Ms. Clayton, would you comment on that?

12 Ms. Clayton. Oh, yes. I agree completely, and what Life
13 Dynamics admitted back in 2000, I have always wondered why didn't
14 get prosecuted for it because it was an admitted fact by the guy
15 they hired. That is who the DOJ should be going after if they
16 have time?

17 Mr. Nadler. In summary, we have the refusal by the committee
18 to -- who are making all sorts of accusations against StemExpress.
19 We have a refusal by the committee to talk to them, to ask them
20 for explanations. Then we have the committee or Mr. -- apparently
21 taking, directly or indirectly, material from Mr. Daleiden,
22 stolen from the StemExpress website without asking StemExpress
23 whether -- and that material seems to be doctored, all to say that

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1 StemExpress and other similar organizations are doing illegal
2 activities.

3 But you don't want to talk to them and see if they have an
4 explanation, and you do take apparently false material stolen for
5 that purpose in order to pressure the DOJ. Is that a fair summary
6 of what seems to be going on?

7 Mr. Raben. Yes.

8 Mr. Nadler. Is that a legitimate function of Congress?

9 Mr. Raben. I won't -- I will repeat what I said, that the
10 concern that I have after 20-some years of being on both sides
11 of it is when a Congressional gavel is used to intimidate or
12 pressure an investigative agency to take action that they think
13 it ought to be taken, particularly in the face of now 20 states.
14 Twenty state officials, non-partisan, have said on the record they
15 have looked into this or related facts and declined to go forward
16 with prosecutions.

17 Mr. Nadler. Thank you very much. My time is expired.

18 Mrs. Blackburn. Mrs. Love, you are recognized for five
19 minutes.

20 Mrs. Love. Thank you, Chairman. And thank you to the panel
21 for being here.

22 I want to contrast and focus on two different things -- organ
23 donations and fetal tissue donations. First, you know, many say

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1 that organ donation is a gift that one can give. It is a beautiful
2 thing when you think about somebody donating their organs. And
3 organ donations are done with dignity, disclosure of where and
4 how the organs will be used, and in every hospital in the nation
5 there are uninfluenced counselors to help with the process and
6 no money is made from the organ donation. The process is
7 transparent and seen as ethical.

8 On the other hand, when it comes to fetal tissue donation,
9 it is different. A scared, vulnerable woman, including a minor
10 who is under age, can come into a clinic on the morning of her
11 surgery, and first she needs to give consent to the procedure
12 without any parental guidance or anyone there.

13 Then, before the event, before this invasive procedure, a
14 tissue technician comes to her and gets her to donate her baby
15 body parts. Instead of an unbiased counselor, the tissue
16 technician may be focused on making a commission, rather than
17 protecting that woman's best interest. It is not transparent how
18 the fetal organs will be used or what -- or by what organization.

19 To me, the contrast is astounding. It is ethical -- it is
20 unethical for this procedure to happen this way. So my question
21 is: who protects the woman's interest in each case? Who
22 protects the minor's interest in this case? There are no laws
23 existing -- there are no existing laws related to consent for fetal

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1 tissue donation.

2 How many organs are needed? How much will be paid out for
3 each body part? And as a mother of two teenage girls, I am
4 absolutely astounded and outraged that we don't have laws in place
5 to protect our minors.

6 Mr. Lennon, why is there uniform law for organ donation for
7 every -- in every hospital in this nation and an entirely different
8 practice for donations of fetal organ tissue?

9 Mr. Lennon. I don't know, and I would have to speculate.
10 That is a good question.

11 Mrs. Love. Mr. -- is it --

12 Mr. Sukhia. Sukhia.

13 Mrs. Love. -- Sukhia.

14 Mr. Sukhia. Yes. My father was Persian and came -- he was
15 actually from India, but his people were from Persia. My cousins
16 all say Keniya, but it is Sukhea. But so Sukhia.

17 Mrs. Love. Is there any evidence that -- if there is any
18 evidence that a law is being broken, or suggestions of
19 profiteering from baby organs, should there be investigations to
20 ensure this -- that this is not the case?

21 Mr. Sukhia. Yes. And I thought that was the focus of this
22 hearing, which is to ask of a federal prosecutor, if you had this
23 information, would it justify a thorough investigation to

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1 ascertain those facts?

2 Mrs. Love. That is right. At the end of your comments, you
3 mentioned that it is actually the duty to investigate to make sure
4 that laws aren't being broken.

5 Mr. Sukhia. Yes, ma'am.

6 Mrs. Love. Thank you. Ms. Foster, I want to point out five
7 immediate differences when it comes to organ donation and fetal
8 tissue donation and ask why there would be such a gross difference.
9 And I want to ask your thoughts after you hear these five.

10 First, organ donation is done with protections and advocates
11 for the donor and/or the person giving consent for the donation
12 of the organs of a loved one sometimes that is already deceased.
13 There is no profit being made, or monies exchanged, with organ
14 donation. Furthermore, if there was any evidence of such, there
15 would be great cause to investigate.

16 Three, there is never a minor under duress having to make
17 these decisions alone without the consent or advocate of an adult
18 or for any operation procedure, let alone an invasive procedure.
19 Furthermore, a minor would never be in a position to make the
20 decision to donate the organs of another person.

21 There is no contact, when it comes to organ donation, between
22 the recipient of the organ, the physician procuring the organs,
23 or the transfer team with the consent-giver -- the transfer team

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1 of the consent-giver before the consent is being given. And the
2 HIPAA violations would never be allowed when it comes to organ
3 donation.

4 So I want to ask you this. If you are ever in a clinic sitting
5 in that room, understand that those protections are different,
6 who is there advocating for you?

7 Ms. Foster. In an abortion clinic?

8 Mrs. Love. Yes.

9 Ms. Foster. No one.

10 Mrs. Love. No one. Now, furthermore, who is there
11 advocating for a minor who this country would not let get behind
12 the wheel of a vehicle, would not allow to vote, would not allow
13 to join the military, would not allow -- be allowed to smoke, would
14 not even be allowed to join a gym because there is a financially
15 binding contract?

16 Ms. Foster. No one.

17 Mrs. Love. No one.

18 Mrs. Blackburn. The gentlelady yields back.

19 I recognize myself, five minutes, for questions. And as a
20 reminder my colleagues, I leave myself until last in the
21 questions, so that everyone is clear.

22 I want just to go back to a couple of comments that were made,
23 and I do have a couple of questions for you all. The pricing

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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

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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.

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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?

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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

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1 packet of materials to be entered into the record, and ask
2 unanimous consent that those be made part of the record.

3 Mrs. Blackburn. So ordered.

4 And we also will submit the document binder, ask that that
5 be submitted for the record, and that staff make the appropriate
6 redactions. So ordered.

7 We will also submit an article from the Sacramento Business
8 Journal from Cate Dyer, the founder and CEO of StemExpress. That
9 will go into the record with her -- the ranking on StemExpress
10 by biz journals.

11 We also would put into the record a screenshot we pulled from
12 StemExpress' website just this morning, which still has the fetal
13 tissue sales components in --

14 Ms. DeGette. Madam Chair, have we reviewed that document?

15 Mrs. Blackburn. From this morning? No, you have not.

16 Ms. DeGette. Yes.

17 Mrs. Blackburn. Because we pulled it this morning, but you
18 are welcome to look at it.

19 Ms. DeGette. I would like to look at it.

20 Mrs. Blackburn. Yes. So ordered.

21 We also have the sourcing of --

22 Ms. DeGette. Well, wait a minute. Before -- I am going to
23 reserve the right to object.

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1 Mrs. Blackburn. You can reserve the right, and we will come
2 back to that one. We also have the source of exhibits that we
3 will put in the record with the exhibits, so that you will know
4 where they came -- there was a question on Exhibit B5, the chart
5 that showed the growth of the procurement business' revenue.
6 That came from business magazine articles and the Congressional
7 Research Service. So that you all are aware of that.

8 And then there was also a question on Exhibit B4, that chart
9 with the growth in the number of abortion clinics. That
10 information for that chart came from the procurement business
11 owner and a contract with the abortion organization. So ordered.

12 Ms. DeGette. Madam Chair, I withdraw my reservation.

13 Mrs. Blackburn. It is submitted --

14 Ms. DeGette. But I will also state -- but I take umbrage
15 at the last statement you made about that last document. It was
16 never ratified. That contract was never ratified. It was a
17 draft. It says that on your specific --

18 Mrs. Blackburn. Right. And the sourcing, this is what we
19 are putting into the record with the document.

20 Ms. DeGette. Well, as you know, we have already litigated
21 that and I object to them, but, you know, you overruled it.

22 Mrs. Blackburn. With that, the hearing is adjourned, and
23 I thank our witnesses.

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1 [Whereupon, at 12:50 p.m., the committee was adjourned.]