

TESTIMONY OF MICHAEL J. NORTON

Regarding the Investigation by the Select Committee on Infant Lives of the U.S. House of Representatives' Energy and Commerce Committee into Potential Violations of 42 U.S.C. 289g-2 Concerning Unlawful Transfers of Fetal Tissue

Chairman Blackburn, Ranking Member Schakowsky, and Esteemed Members of the Select Committee on Infant Lives:

My name is Michael J. Norton. I am an attorney with the Denver law firm of Thomas N. Scheffel & Associates, P.C. Over the years, I have tried over 200 cases and have appeared in numerous federal and state courts, including in Colorado, Florida, Iowa, Louisiana, Missouri, Texas, Pennsylvania, Washington, and Wyoming.

I am currently admitted to the United States Supreme Court, the United States Court of Appeals for the Tenth Circuit, the United States Court of Appeals for the Eighth Circuit, the United States Court of Appeals for the Fifth Circuit, the United States Court of Appeals for the Ninth Circuit, the United States District Court for the District of Colorado, the United States District Court for the Western District of Washington, the United States District Court for the Southern District of Texas, the United States District Court for the Southern District of Iowa, and the United States District Court for the District of Columbia. I am also a member of the bars of the State of Colorado and the Commonwealth of Virginia.

By way of background, I was appointed United States Attorney for the District and State of Colorado by President Ronald Reagan in 1988. I was reappointed to this office by President George H.W. Bush in 1990.

As Colorado's United States Attorney, I served as the chief federal law enforcement officer for the State of Colorado and directed the United States Department of Justice's criminal and civil justice priorities. During my service as United States Attorney, I headed numerous federal investigations and prosecutions of organized crime trafficking in narcotics and dangerous drugs, environmental crimes, financial institution crimes, and securities frauds. I also coordinated the Justice Department's massive criminal investigation and prosecution of Rockwell International Corporation for environmental crimes at the Rocky Flats Nuclear Weapons Plant in Golden, Colorado. The conviction of Rockwell International Corporation led to the imposition of a fine of \$18.5 million – the largest criminal hazardous waste fine in U.S. history to that time.

Both before and after my service as United States Attorney, I have been engaged in the private practice of law. My law firm Thomas N. Scheffel & Associates focuses in, among other legal areas, estate planning and probate litigation, business law, complex civil litigation, and white collar criminal defense.

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Federal law prohibits the harvesting and trafficking of fetal body parts for profit, and provides for criminal penalties for those who knowingly ignore the law. 42 U.S.C. § 289g-2. The law, passed by a Democratic-controlled House and Senate and signed by President Clinton in 1993, has, as its central tenet, the principle that there will be no profit from the harvesting and use of fetal tissue.

Thus, this law expressly states that it is unlawful for any person to “knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce.”¹ 42 U.S.C. § 289g-2(a). It is further unlawful “for any person to solicit or knowingly acquire, receive, or accept a donation of human fetal tissue for the purpose of transplantation of such tissue into another person if the donation affects interstate commerce, the tissue will be or is obtained pursuant to an induced abortion, and . . . the person who solicits or knowingly acquires, receives, or accepts the donation has provided valuable consideration² for the costs associated with such abortion.” 42 U.S.C. § 289g-2(b)(3).

Federal law also establishes substantial limitations on the use of fetal tissue for “research.” 42 U.S.C. § 289g-1. The informed consent of the mother of the unborn child is required. 42 U.S.C. § 289g-1(b). The law also prohibits any “alteration of the timing, method, or procedures used to terminate the pregnancy . . . solely for the purposes of obtaining the tissue.” 42 U.S.C. § 289g-1(c)(4).

The potential profiteering and trafficking in aborted fetal tissue is of grave concern, not only on the federal level, but also in many states, including Colorado. A number of states, including Colorado, have adopted laws regarding trafficking in fetal tissue that are similar to the federal statute. Many are therefore concerned that these state statutes, as well as the federal statute, have been violated and are being flouted by the abortion industry.

In 2015, it was revealed that Denver’s Planned Parenthood of the Rocky Mountains was making a profit by harvesting and trafficking the hearts, brains, lungs, eyes and livers of babies whose lives Planned Parenthood has ended by abortion. These gruesome revelations came from a series of videos released by an organization called the Center for Medical Progress³ which demonstrated that various affiliates of Planned Parenthood Federation of America, including Denver’s Planned Parenthood of the Rocky Mountains, had been actively engaged in harvesting and trafficking, for profit, body parts of babies whose lives Planned Parenthood has ended by abortion.

¹ “Interstate commerce” has been construed extremely broad by the U.S. Department of Justice. See, e.g., Jonathan H. Adler, “How the Justice Department is using the Commerce Clause to criminalize forcible beard cutting as a hate crime,” *The Washington Post*, June 24, 2014; available at <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/06/24/how-the-justice-department-is-using-the-commerce-clause-to-criminalize-forcible-beard-cutting-as-a-federal-hate-crime/>.

² “Valuable consideration” does not, by definition, “include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.” 42 U.S.C. § 289g-2 (e)(3).

³ These videos may be accessed at the Center for Medical Progress’s website at <http://www.centerformedicalprogress.org/cmp/investigative-footage/>

In the first video released by the Center for Medical Progress, Planned Parenthood Federation of America executive Deborah Nucatola was shown in a Los Angeles restaurant discussing prices for the body parts of aborted babies. Ms. Nucatola was recorded as stating that Planned Parenthood's abortionists would alter abortion procedures in order to further Planned Parenthood's organ harvesting and trafficking program. One such way, she related, was by using an ultrasound where ordinarily it would not be used so as to prevent damage to valuable organs of aborted babies.

These videos have not simply created a generalized queasiness at surgery and blood. No matter how one stands on the issue of abortion, no one who has viewed these videos has come away thinking that Planned Parenthood's harvesting and selling of the lungs, hearts, brains, or other organs of unborn babies is consistent with the values of our American society. Moreover, this conduct may well have violated 42 U.S.C. § 289g-2 and, if so, there should be some accountability on the part of the wrongdoers.

The harvesting and trafficking, for profit, of body parts of babies whose lives have been ended by abortion is a grisly business and it needs transparency. That transparency, a clear trail with readily identifiable links tracking the organs and tissues taken from an aborted baby, through the harvesting process, through every transportation of each body part, and eventually to final use and disposal, is essential to show whether any statute has been broken.

In particular, the details of all payments, expenses, costs, and persons involved with any of the actions or monetary transfers is indispensable in deciding whether the statute has been violated.

Unfortunately, to date, no Executive Branch agency appears to have taken any responsibility to investigate potential violations of current federal law. Because we are a Nation of laws, this fact alone makes this investigation by the Select Committee on Infant Lives of the U.S. House of Representatives' Energy and Commerce Committee into potential violations of 42 U.S.C. § 289g-2 very important to our system of ordered liberty.

When I was asked to testify before the Select Committee on Infant Lives on this matter, I started where I would have started as U.S. Attorney in any criminal investigation – with the relevant statute and the elements of the criminal offense. I was supplied with and reviewed documents and evidence that the Select Committee on Infant Lives has gathered.

The relevant statute is quite clear – the central question is whether anyone has profited from the sale of hearts, brains, livers, and other organs harvested from aborted babies. It seems clear from the documents and evidence that the Select Committee on Infant Lives has gathered, as well as the videos I have reviewed, that there has been profiteering at multiple levels in this grisly business.

Congress is rightly alarmed by the evidence that has emerged to date that there has been profiteering from the sale of hearts, brains, livers, and other organs harvested from aborted babies. Our

Nation is rightly served by the aggressive pursuit of the truth by the Select Committee on Infant Lives. I commend the Select Committee on Infant Lives for its diligence.

In my opinion, there is probable cause to believe that the relevant statute has been violated. It is therefore also my opinion that our Nation would also be well-served by an aggressive investigation and, should the facts support it, the prosecution of these criminal violations by the appropriate federal authorities.

I therefore urge the Select Committee on Infant Lives to forward its evidence and findings to the U.S. Justice Department with the request that the U.S. Justice Department take all necessary and appropriate action available to hold those who have violated this law accountable.

I am honored to have been asked to participate in this hearing and will be pleased to assist the Select Committee on Infant Lives in whatever way I am able.

Thank you.