

Testimony of Caroline Fredrickson, President,
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Before the United States House of Representatives Committee on the Judiciary

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Good morning, Chairman Goodlatte and Ranking Member Conyers and Distinguished Members of the Committee. My name is Caroline Fredrickson, and I am the president of the American Constitution Society for Law and Policy. I am testifying today in my personal capacity and do not purport to represent any institutional views of the American Constitution Society. Before joining the American Constitution Society, I served as the director of the Washington Legislative Office of the American Civil Liberties Union and as general counsel and legal director of NARAL Pro-Choice America. In addition, I have served as chief of staff to Senator Maria Cantwell, deputy chief of staff to then-Senate Democratic Leader Tom Daschle, and, during the Clinton administration, special assistant to the president for legislative affairs. I received my bachelor of arts from Yale University and my law degree from Columbia University School of Law. Thank you for providing me the opportunity to testify here today in response to this most recent attack on Planned Parenthood.

Planned Parenthood is a necessary and integral part of our nation's health care system.

Planned Parenthood is a nearly century-old health care provider that plays a critical role in securing the right to healthcare for millions of Americans every year. In fact, each year, Planned Parenthood health centers provide services to 2.7 million patients, and no less than one in five women in the United States has visited a Planned Parenthood health center at least once in her lifetime. Planned Parenthood provides a wide array of services to its patients each year, including family planning counseling and contraception to 2.1 million patients, more than 1.1 million pregnancy tests, nearly 400,000 Pap tests, nearly 500,000 lifesaving breast exams, screenings to 88,000 women whose cancer was detected early or whose abnormalities were identified and addressed, nearly 4.5 million tests and treatments for sexually transmitted infections, including 700,000 HIV tests, and diagnoses of more than 169,000 sexually transmitted infections, 1.4 million emergency contraception kits, and education programs and outreach to more than 1.5 million people. These services help women prevent an estimated 516,000 unintended pregnancies and 217,000 abortions every year.¹

These are services that women, men, and young people in this country desperately need, and that many would go without should they lose access to Planned Parenthood's health centers. Planned Parenthood provides services at approximately 700 health centers located in every state in the nation, and fifty-four percent of those health centers are in rural or medically underserved areas, or areas with shortages in health professionals.² There are simply insufficient numbers of alternative health care providers to absorb the patients who would need care should they lose access to Planned Parenthood. As Georges Benjamin, executive director of the American Public Health Association, has commented, it is "ludicrous" to suggest that other providers could

¹ *This is Who We Are: Creating a Healthier World for Women, Men, and Young People*, PLANNED PARENTHOOD FED'N OF AM., https://www.plannedparenthood.org/files/1014/3638/1448/WhoWeAre_Gen.pdf (last updated July 2015) [hereinafter PP Info Sheet].

² *Serving Underserved Patient Communities Throughout the Nation*, PLANNED PARENTHOOD FED'N OF AM., https://filemanager.capwiz.com/filemanager/filemgr/ppfa/Underserved_Patient_Communities_FINAL__3_.pdf (last updated July 2015).

adequately take on Planned Parenthood's patients.³ Sara Rosenbaum, the Harold and Jane Hirsh Professor of Health Law and Policy and Founding Chair of the Department of Health Policy at George Washington University School of Public Health and Health Services, put it this way: "the assertion that community health centers could step into a breach of this magnitude is simply wrong and displays a fundamental misunderstanding of how the health care system works."⁴ Planned Parenthood provides sorely needed services to women, men, and young people across the country, including and especially in areas where few other health professionals and resources are available.

Planned Parenthood health centers are particularly crucial for poor women in this country. More than half of Planned Parenthood's 2.7 million patients each year rely on public health programs such as Medicaid to cover their costs, and seventy-eight of Planned Parenthood's patients live with incomes of 150 percent of the federal poverty level or less, the equivalent of \$36,375 a year for a family of four in 2015.⁵ Indeed, in sixty-eight percent of the counties with a Planned Parenthood health center, Planned Parenthood serves at least half of all safety-net family planning patients.⁶ As Deon Haywood, executive director of Women With a Vision, Inc., summed it up, an attack on funding for Planned Parenthood "is an outright attack on poor women."⁷

Planned Parenthood is an integral part of the health care system in this country. It provides critical health care services to many women, particularly poor women, who might otherwise go without those services. It is also a well-known and well-liked institution. In a recent poll, forty-seven percent of Americans rated Planned Parenthood positively, compared to thirty-one percent who rated it negatively. A full sixty-one percent of Americans opposed eliminating public funding to Planned Parenthood.⁸ With one in five women having used Planned

³ Liz Szabo & Laura Ungar, *Family Planning Budgets in Crisis before Planned Parenthood Controversy*, USA TODAY (July 31, 2015), <http://www.usatoday.com/story/news/2015/07/30/family-planning-budgets-crisis-before-planned-parenthood-controversy/30861853/>.

⁴ Sara Rosenbaum, *Planned Parenthood, Community Health Centers, and Women's Health: Getting the Facts Right*, HEALTH AFFAIRS BLOG (Sept. 2, 2015), <http://healthaffairs.org/blog/2015/09/02/planned-parenthood-community-health-centers-and-womens-health-getting-the-facts-right/>.

⁵ PP Info Sheet, *supra* note 1.

⁶ Jennifer J. Frost & Kinsey Hasstedt, *Quantifying Planned Parenthood's Critical Role in Meeting the Need for Publicly Supported Contraceptive Care*, HEALTH AFFAIRS BLOG (Sept. 8, 2015), <http://healthaffairs.org/blog/2015/09/08/quantifying-planned-parenthoods-critical-role-in-meeting-the-need-for-publicly-supported-contraceptive-care/>.

⁷ Statement on Jindal Administration Cutting Medicaid Funding to Planned Parenthood, *Defunding Creates Barriers to Services for Low-Income Women and Women of Color*, WOMEN WITH A VISION (Aug. 4, 2015), <http://wwav-no.org/wp-content/uploads/Jindal-PP-Press-Release.pdf>.

⁸ Janie Velencia, *Americans Like Planned Parenthood More Than They Like Politicians*, HUFF. POST (Sept. 29, 2015), http://www.huffingtonpost.com/entry/planned-parenthood-favorable-rating_560aab72e4b0768126ff261a.

Parenthood's services in her lifetime, and nearly two-thirds of Americans opposing the effort to defund Planned Parenthood, Planned Parenthood is clearly a trusted and respected organization. Yet it is an organization that is once again under attack by extreme anti-choice organizations and individuals. And it is an organization that I believe will once again, after months of accusations and investigations, be cleared of any and all wrongdoing.

No evidence has been produced that Planned Parenthood engaged in any wrongdoing or illegal activities.

This most recent round of attacks on Planned Parenthood was instigated by an anti-choice organization, the Center for Medical Progress, whose members deceptively infiltrated Planned Parenthood clinics and conferences claiming that they worked for a tissue procurement company. The CMP representatives surreptitiously (and possibly illegally)⁹ recorded meetings with Planned Parenthood staff and then, over the course of several months, released numerous videos of those encounters. CMP now claims that the videos show that Planned Parenthood acted illegally in selling fetal tissue and violating the Partial Birth Abortion Ban.

The videos produced by the Center for Medical Progress have been heavily edited and are not reliable as evidence.

Regardless of the content of the videos as released by CMP, which arguably show no wrongdoing at all, those videos are unreliable and unusable as evidence because they have been edited and CMP has not released full, unedited versions. Planned Parenthood hired research firm Fusion GPS to review the videos and assess their authenticity. Fusion GPS then assembled three teams of experts in video forensics, production, and transcription to review the short videos that have been widely reported on and viewed, as well as the longer versions of those videos which CMP claim to contain "full footage."

The experts, including Grant Fredericks, who is a contract instructor of video sciences at the FBI National Academy and one of the most experienced video experts in North America, found a number of deceptive edits in the CMP videos. In many cases, particularly in the shorter videos, CMP edited dialog out of context in ways that substantively altered the meaning of the dialog. In other cases, large segments of dialog were simply omitted altogether. Even in the longer, so-called "full footage" videos, the experts noted "loss of significant time and image continuity."¹⁰ There is no question that both the shorter videos and the "full footage" videos are selectively and intentionally edited and incomplete. Indeed, even Representative Trent Franks

⁹ See Irin Carmon, *Does the Planned Parenthood Video Violate State Recording Laws*, MSNBC (July 16, 2015), <http://www.msnbc.com/msnbc/does-the-planned-parenthood-video-violate-state-recording-laws>; see also Laura Bassett, *Group Behind Planned Parenthood Sting Video May Have Tricked IRS, Donors*, HUFF. POST (July 17, 2015), http://www.huffingtonpost.com/entry/planned-parenthood-sting-video_55a92205e4b0896514d11ac9.

¹⁰ *Analysis of Center for Medical Process Videos*, FUSION GPS 3 (Aug. 25, 2015), available at <https://istandwithpp.org/files/9414/4068/4146/8-27-15-Analysis-Center-for-Medical-Progress-Videos-Forensic-Report.pdf>.

admitted that this committee has neither seen nor requested the full, unedited source footage.¹¹ As such, in the words of the expert analysis, “the manipulation of the videos does mean they have no evidentiary value in a legal context and cannot be relied upon for any official inquiries.”¹²

Jurisdictions that have conducted investigations into Planned Parenthood’s fetal tissue donation activities have universally found no wrongdoing.

At the outset, it is important to note that fetal tissue donation is entirely consistent with federal law. After rigorous debate and analysis, a 1988 blue-ribbon panel, which was called the Human Fetal Tissue Transplantation Research Panel, concluded that “it was acceptable public policy to support research with fetal tissue.”¹³ In response to and in furtherance of the panel’s work, in 1993, Congress overwhelmingly passed the National Institutes of Health Revitalization Act, which codified the legal donation of fetal tissue for research. Under that law, while the sale of fetal tissue is illegal, the reimbursement for actual costs incurred, such as storage, processing, and transportation of that tissue, is not.¹⁴ It is also important to emphasize what a minor portion of Planned Parenthood’s resources go toward fetal tissue donation. Of Planned Parenthood’s nearly 700 health centers, only one percent offer fetal tissue donation facilitation to patients who request it.¹⁵ Finally, it is important to note that fetal tissue is donated voluntarily by the women who choose to do so, and holds the potential to save lives and end suffering. Fetal tissue research has led to such breakthroughs as the vaccines for polio and rubella, and is currently being conducted for treatments of cancer, blindness, Alzheimer’s, heart disease, HIV and diabetes.¹⁶ Despite the known legality and importance of fetal tissue donation and the lack of credible evidence of any wrongdoing on Planned Parenthood’s part, this committee, three additional congressional committees, and numerous states have wasted countless resources on fruitless investigations.

As of this date, six states have completed investigations into whether Planned Parenthood violated any laws in its fetal tissue donation program. All six – Missouri, Pennsylvania, Georgia,

¹¹ See Paul Singer, *Hearing Launches Push to Defund Planned Parenthood*, USA TODAY (Sept. 29, 2015), <http://www.usatoday.com/story/news/politics/2015/09/09/hearing-starts-push-defund-planned-parenthood/71916392/>.

¹² *Analysis of Center for Medical Process Videos*, *supra* note 10, at 2.

¹³ CONSULTANTS TO THE ADVISORY COMMITTEE TO THE DIRECTOR, NATIONAL INSTITUTES OF HEALTH, REPORT OF THE HUMAN FETAL TISSUE RESEARCH PANEL 2 (vol. I, 1988).

¹⁴ 42 U.S.C.A. §§ 289g-2(a) and (e)(3).

¹⁵ Statement of Cecile Richards, President, Planned Parenthood Federation of America, before the House Committee on Oversight and Government Reform (Sept. 29, 2015), *available at* <https://oversight.house.gov/wp-content/uploads/2015/09/Richards-PPFA-Statement-9-29-Planned-Parenthood.pdf>.

¹⁶ See Elizabeth Yuko, *The Simple Reason Why the Right’s Latest Planned Parenthood Crusade is So Outrageous*, SALON MEDIA GROUP (July 20, 2015), http://www.salon.com/2015/07/20/the_simple_reason_why_the_planned_parenthood_hoax_is_so_outrageous/; see also Nathalia Holt, *The Case for Fetal-Cell Research*, N.Y. TIMES (July 30, 2015), http://www.nytimes.com/2015/07/30/opinion/the-case-for-fetal-cell-research.html?_r=0.

Indiana, Massachusetts, and South Dakota – have unanimously concluded that Planned Parenthood did not violate any laws in its tissue donation programs. Citing a lack of evidence of wrongdoing, seven other states – Iowa, Delaware, Idaho, Minnesota, New Hampshire, Virginia, and Colorado – have declined to investigate Planned Parenthood.¹⁷ In fact, Representative Jason Chaffetz, Chairman of the House Committee on Oversight and Government Reform, whose committee questioned Planned Parenthood CEO Cecile Richards for over five hours just last week, admitted to CNN’s Wolf Blitzer: “No, I’m not suggesting that they broke the law.”¹⁸ In sum, there is absolutely no evidence here that Planned Parenthood’s facilitation of fetal tissue donation by its patients has violated any laws.

Abortion is a safe and legal medical procedure that is an essential component of women’s health care.

According to the American College of Obstetricians and Gynecologists, the nation’s leading group of professionals providing health care for women, “abortion is an essential component of women’s health care.”¹⁹ Moreover, abortion is one of the safest medical procedures performed in the United States, with major complications being experienced less than one percent of the time.²⁰ And finally, three in ten women in the U.S. will have a safe, legal abortion during her lifetime.²¹ Women and their doctors clearly understand that abortion is a safe, legal, and essential part of women’s health care.

Yet access to abortion is a perennial target of politicians across the country. Between 2010 and 2014, states across the country adopted 231 new abortion restrictions, including mandatory counseling and waiting periods, restrictions on medication abortions, targeted

¹⁷ *Fact Sheet: States Clear Planned Parenthood in Inquiries Sparked by Video Fraud*, PLANNED PARENTHOOD FED’N OF AM. (Sept. 29, 2015), <https://istandwithpp.org/files/1514/4356/6027/9-29-15-State-Investigations-Clear-Planned-Parenthood.pdf>.

¹⁸ Press Release, Committee on Energy and Commerce Democrats, Pallone: Committee Republicans Continue Fishing Expedition into Planned Parenthood, Despite Chairman Chaffetz’s Admission that he has No Evidence Planned Parenthood Violated Any Laws (Oct. 1, 2015), *available at* <https://democrats-energycommerce.house.gov/newsroom/press-releases/pallone-committee-republicans-continue-fishing-expedition-into-planned>.

¹⁹ College Executive Board, *Abortion Policy*, AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS 1, <http://www.acog.org/-/media/Statements-of-Policy/Public/sop069.pdf?dmc=1&ts=20151006T1445087511> (last updated Nov. 2014).

²⁰ Heather D. Boonstra et al., *Abortion in Women’s Lives*, GUTTMACHER INST. 9 (2006), *available at* <https://www.guttmacher.org/pubs/2006/05/04/AiWL.pdf>; Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health Perspective*, in *A CLINICIAN’S GUIDE TO MEDICAL AND SURGICAL ABORTION* 11-22 (Maureen Paul, et al., eds. 1999); Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 *OBSTETRICS & GYNECOLOGY* 175-83 (2015).

²¹ Lawrence B. Finer & Mia R. Zolna, *Shifts in Intended and Unintended Pregnancies in the United States, 2001–2008*, 104 *AM. J. OF PUB. HEALTH* S43-S48 (2014).

regulation of abortion providers, and further restrictions on insurance coverage for abortion.²² Just this year, an additional fifty-one restrictions have been passed, bringing the total since 2010 to 282.²³ In some states, these laws have already had a devastating impact on access to women's health care. For instance, since Texas passed its infamous House Bill 2, more than half of the state's abortion clinics have closed.²⁴ As of 2014, the Guttmacher Institute ranked a full twenty-seven states as hostile to abortion, up from only thirteen in 2000.²⁵

What women and their doctors also understand is that, without access to safe and legal abortion, women resort to unsafe means to end unwanted pregnancies. Indeed, approximately 21 million women around the world obtain unsafe abortions each year, and complications from these unsafe procedures account for approximately thirteen percent of all maternal deaths.²⁶ Women who seek access to abortion, like any patient seeking access to essential health care, are entitled to "privacy, dignity, respect, and support."²⁷ Elected officials should listen to what women and their doctors already know – sham laws and baseless investigations that serve only to burden a woman's right to choose have no place in our nation's statehouses.

The CMP videos are nothing more than the latest pretext for attacking Planned Parenthood and a woman's right to choose.

This is not the first time Planned Parenthood has been under attack and accused of illegal or unethical behavior by anti-choice advocates. In fact, Planned Parenthood recently documented no less than nine times since 2000 that this scene has played out.²⁸ Anti-choice advocates surreptitiously obtain footage from Planned Parenthood clinics and offices, doctor that footage, and release it to the public. Independent investigators conclude that the footage is heavily edited and holds no evidentiary value. And after a deluge of accusations, hearings, and investigations, Planned Parenthood is cleared of any wrongdoing. This time is no different.

²² *In Just the Last Four Years, States Have Enacted 231 Abortion Restrictions*, GUTTMACHER INST. (Jan. 5, 2015), <http://www.guttmacher.org/media/inthenews/2015/01/05/>.

²³ *Laws Affecting Reproductive Health and Rights: State Trends at Midyear, 2015*, GUTTMACHER INST. (July 1, 2015), <http://www.guttmacher.org/media/inthenews/2015/07/01/>.

²⁴ Christina Cauterucci, *Shuttering Texas Abortion Clinics Means More Second-Term Abortions*, SLATE (Oct. 5, 2015), http://www.slate.com/blogs/xx_factor/2015/10/05/as_texas_abortion_clinics_close_second_term_abortions_will_spike.html.

²⁵ *In Just the Last Four Years, States Have Enacted 231 Abortion Restrictions*, *supra* note 22.

²⁶ WORLD HEALTH ORGANIZATION, UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF THE INCIDENCE OF UNSAFE ABORTION AND ASSOCIATED MORTALITY IN 2008 1-6 (6th ed. 2011), available at http://apps.who.int/iris/bitstream/10665/44529/1/9789241501118_eng.pdf; see also *Facts on Induced Abortion Worldwide*, GUTTMACHER INSTITUTE (Jan. 2012), available at http://www.who.int/reproductivehealth/publications/unsafe_abortion/induced_abortion_2012.pdf.

²⁷ College Executive Board, *supra* note 19, at 1.

²⁸ *The Fanatical Crusade Against Planned Parenthood: Decades of Doctored Videos, Failed Entrapments, and False Accusations*, PLANNED PARENTHOOD FED'N OF AM. (Sept. 21, 2015), <https://istandwithpp.org/facts/fanatical-crusade-against-planned-parenthood-decades-doctored-videos-failed-entrapments-and-false-accusations/>.

The last accusation of illegal fetal tissue sales by Planned Parenthood came in 2000, and the investigation led to no evidence of wrongdoing. In 2002, accusations surfaced that Planned Parenthood failed to report statutory rape. Again, the investigations led to no evidence of wrongdoing. In 2011, sting videos purported to show that Planned Parenthood covered up sex trafficking and condoned statutory rape. That investigation led to the conclusion that Planned Parenthood had actually gone above and beyond its duties in reporting what it believed was illegal behavior. Nine times since 2000, Planned Parenthood has been under attack based on heavily edited, misleading videos. Nine times since 2000, Planned Parenthood has been completely cleared of wrongdoing. This time is no different.

In fact, even the actors behind this latest attack are no different than those we have seen in the past. David Daleiden, the executive director of the Center for Medical Progress, is affiliated with Live Action, which has repeatedly used the same sting video tactics to harass Planned Parenthood.²⁹ Indeed, CMP itself is arguably nothing but a front organization for Live Action.³⁰ And alarmingly, some of CMP's other officers and board members have direct ties to violent extremist groups. Cheryl Sullenger, CMP's senior policy advisor, once served two years in prison for conspiring to bomb an abortion clinic. CMP's secretary, Troy Newman, is also the president of Operation Rescue, which has an open history of violence and which continues to employ Ms. Sullenger.³¹ The name Center for Medical Progress may be unknown, and these particular videos may be new, but the actors and the acts are the same as they have been throughout the decades-long attack on Planned Parenthood and a woman's right to choose.

Few people watch these videos and sincerely believe that Planned Parenthood has acted illegally. Surely the Center for Medical Progress does not believe it. These videos are not about alleged illegal sales of fetal tissue. They are not about alleged violations of the Partial Birth Abortion Ban. They are about a persistent campaign by a small group of people who believe that abortion should be illegal, by any means necessary.

²⁹ See Rachana Pradhan, *Experienced Foe Behind Planned Parenthood Videos*, POLITICO (July 21, 2015), <http://www.politico.com/story/2015/07/experienced-foe-behind-planned-parenthood-videos-120439.html#ixzz3h2Dj6Z1L>.

³⁰ See Amanda Marcotte, *What is the Center for Medical Progress, the Group Behind the Latest Viral Abortion Video?*, SLATE (July 15, 2015), http://www.slate.com/blogs/xx_factor/2015/07/15/live_action_distributed_the_planned_parenthood_sting_video_why_aren_t_they.html.

³¹ See Callie Beusman, *Meet the Terrorists in the War on Women*, BROADLY (Aug. 2, 2015), https://broadly.vice.com/en_us/article/meet-the-terrorists-in-the-war-on-women.