

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

September 28, 2015

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

The Honorable Joe Pitts
Chairman
Subcommittee on Health
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton, Chairman Pitts, and Chairman Murphy:

We write to express our deep disappointment in your decision to use this respected Committee to elevate the agenda of anti-choice extremists such as David Daleiden and the Center for Medical Progress (CMP). Your decision to play CMP's discredited, deceptively edited videos at a Committee hearing and make affirmative representations as to their completeness and authenticity is unworthy of this Committee and undermines our belief in the integrity of its processes. We urge you to stop using this Committee to level baseless and politicized attacks on Planned Parenthood and take us ever closer to a government shutdown.

On July 14, 2015, this Committee launched an investigation into allegations that Planned Parenthood was engaged in the sale of fetal tissue for profit based on one heavily edited video released by CMP. The Committee is continuing its investigation of Planned Parenthood and its affiliates and of the tissue procurement organizations (TPOs) that worked with Planned Parenthood. The review has included bipartisan briefings by numerous officials of Planned

Parenthood Federation of America (PPFA) and its affiliates and representatives from three TPOs, as well as documents and written responses to the Committee's questions. To date, as documented by the Democratic staff memo, there is no evidence that Planned Parenthood violated any law.¹

In contrast, the Committee has received substantial evidence indicating that both the short videos and the longer "full footage" videos released by CMP have been substantively edited. As part of its response to the Committee's inquiry, PPFA provided a forensic analysis conducted by a research firm, Fusion GPS, which engaged the services of a video forensics expert, a television producer, and a transcription agency. These experts concluded that the videos—even the supposedly "full footage" videos—do not present a complete or accurate record of the events they purport to depict.² Fusion GPS furthermore warned:

[T]he manipulation of the videos does mean they have no evidentiary value in a legal context and cannot be relied upon for any official inquiries unless supplemented by CMP's original material and forensic authentication that this material is supplied in unaltered form.³

Despite receiving this evidence, Committee Republicans broadcast the discredited videos from CMP at a Health Subcommittee hearing on September 17, 2015, and claimed that they were authentic and unedited.⁴

Chairman Pitts used his question time to play the videos, conveying the videos as an accurate, unedited depiction of practices at Planned Parenthood health centers. He introduced the videos by stating, "The pictures that you're about to see are quite graphic; it's important to show exactly what we're talking about here."⁵ He proceeded to show a video with a photo of a fetus accompanied by audio of a former Stem Express employee describing an abortion procedure from which tissue would be procured. The next edited video clips showed a lunch

¹ Memorandum from Committee on Energy and Commerce Democratic Staff to Subcommittee on Oversight and Investigations Democratic Members and Staff Re: Update on the Committee's Ongoing Investigation of Planned Parenthood Federation of America (Sept. 9, 2015).

² Letter from Cecile Richards, Planned Parenthood Federation of America, to Speaker John A. Boehner (Aug. 27, 2015); Fusion GPS, *Analysis of Center for Medical Progress Videos* (Aug. 25, 2015).

³ Fusion GPS, *Analysis of Center for Medical Progress Videos* (Aug. 25, 2015).

⁴ House Committee on Energy & Commerce, Subcommittee on Health, *Hearing on Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law*, 114th Cong. (Sept. 17, 2015).

⁵ *Id.*

between Dr. Deborah Nucatola and representatives from CMP claiming to be representatives of a TPO.

Chairman Pitts failed to make a unanimous consent request to the members of the Subcommittee to make the CMP videos part of the hearing record. After the videos concluded, he simply stated, “This is the clip of the unedited conversation which Dr. Nucatola explains how she plans her day ... These clips have shown the gruesome reality we’re talking about. They’re available in the public domain ... No organization, especially one that receives millions of dollars from the federal government, should be able to participate in such horrific actions. That’s why we’re here today, and that’s why we’re going to act.”⁶

The majority’s witnesses further underscored Chairman Pitts’ message that CMP’s videos are an accurate depiction of the events they purport to portray. Casey Mattox, Senior Counsel at the Alliance Defending Freedom, alleged that “if you have access to YouTube, you have access to the full versions of these videos. They are on YouTube. I know that because I’ve watched the full versions of the videos.”⁷ Charmaine Yoest, President of Americans United for Life, said, “As the Chairman stated, the full videos are available online, and our team has reviewed the full videos that are available online.”⁸

In fact, the first video shown during the hearing has been widely and publicly discredited. Although it shows a photo of a fetus in the context of a discussion of tissue procurement at a Planned Parenthood affiliate, the photo is actually from a stillborn birth, and was used without consent.⁹ CMP, in fact, has admitted this publicly and updated the description of the video accordingly. The woman who took the photo of her stillborn son revealed that she did not give permission to CMP prior to its use.¹⁰

The subsequent video clips of the lunch with Dr. Nucatola have been analyzed by Fusion GPS.¹¹ Fusion GPS found that “[t]he short videos take a great deal of dialog out of context so as to substantively and significantly alter the meaning of the dialog contained in the long videos.” Additionally, with respect to the longer “full footage” video, Fusion GPS concluded that “the blatant manipulation of this video renders it useless as ‘evidence’ and means it cannot be relied

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Anti-Abortion Video Showed Stillborn Baby—Not Fetus*, The Hill (Sept. 21, 2015).

¹⁰ Tara Culp-Ressler, *Anti-Planned Parenthood Group Caught Passing Stillbirth Photo Off As Abortion*, Think Progress (Aug. 20, 2015).

¹¹ Fusion GPS, *Analysis of Center for Medical Progress Videos* (Aug. 25, 2015).

upon in official inquiries as a credible record of events unless the record is supplemented by CMP's original unedited material."¹²

Similarly, the Fusion GPS analysis concluded that CMP edited content out of many of the long videos, which CMP has claimed captures the "full footage" of each interview.¹³ CMP claims that "sections in the full footage of [the] conversations where bathroom breaks or waiting time between meetings were removed to protect the investigators."¹⁴ However, in several instances, the Fusion GPS analysis concluded that as much as 30 minutes of tape had likely been edited out.¹⁵

Additionally, reports of several hours of missing footage further support the conclusion that the "full footage" videos contain significant edits. Press reports of the August 4, 2015, video depicting representatives from the Planned Parenthood Gulf Coast affiliate cite eight hours of footage, although the "full footage" video released by CMP is only five hours and forty-five minutes long. The Houston Press notes, "The original footage totals more than eight hours between two visits with Planned Parenthood Gulf Coast Medical Director Melissa Farrell."¹⁶ Separately, MNR Daily writes, "In the original eight-hour video, the 'buyers' are shown dealing with Planned Parenthood Gulf Coast Medical Director Melissa Farrell."¹⁷

Playing these misleading and incomplete videos in a Committee hearing and claiming they are "unedited" and depict "reality," despite evidence that this Committee has received to the contrary, undermines the integrity of the proceedings.

Moreover, it is the Committee's practice to ensure that all members present at a proceeding be given the opportunity to register opposition to testimony or exhibits being entered into the Committee record. It is our understanding that testimony provided via videography should be treated no differently than written testimony. Chairman Pitts did not affirmatively request unanimous consent to enter these videos into the hearing record and the Democratic members were not afforded that opportunity. Given this, as well as the widespread evidence

¹² *Id.*

¹³ *Id.*

¹⁴ Center for Medical Progress, *Deconstructing Planned Parenthood's Failed "Forensic Analysis" Report* (Aug. 31, 2015).

¹⁵ *Id.*

¹⁶ Meagan Flynn, *Anti-Abortion Group Releases Planned Parenthood Sting Video Shot in Houston*, Houston Press (Aug. 5, 2015).

¹⁷ Lorraine Caballero, *Planned Parenthood Under Fire After Anti-Abortion Group Releases 5th Gruesome Video*, MNR Daily (Aug. 6, 2015).

The Honorable Fred Upton
The Honorable Joe Pitts
The Honorable Tim Murphy
September 28, 2015
Page 5

regarding the unreliability of the CMP videos, we therefore request that the video and the associated comments be stricken from the official hearing record.

We strongly oppose using this Committee as a platform to level baseless and politicized attacks on Planned Parenthood and on women's health. We request your immediate attention to our request.

Sincerely,



FRANK PALLONE, JR.
Member of Congress



BOBBY L. RUSH
Member of Congress



ANNA G. ESHOO
Member of Congress



ELIOT L. ENGEL
Member of Congress



GENE GREEN
Member of Congress



DIANA DeGETTE
Member of Congress



LOIS CAPPS
Member of Congress



MIKE DOYLE
Member of Congress



JAN SCHAKOWSKY
Member of Congress



G.K. BUTTERFIELD
Member of Congress



DORIS O. MATSUI
Member of Congress



KATHY CASTOR
Member of Congress



JOHN SARBANES
Member of Congress



JERRY McNERNEY
Member of Congress



PETER WELCH
Member of Congress



BEN RAY LUJÁN
Member of Congress



PAUL TONKO
Member of Congress



JOHN YARMUTH
Member of Congress



YVETTE D. CLARKE
Member of Congress



DAVID LOEBSACK
Member of Congress



KURT SCHRADER
Member of Congress



JOSEPH P. KENNEDY, III
Member of Congress



TONY CÁRDENAS
Member of Congress