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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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July 20, 2015

The Honorable Francis S. Collins, M.D.  
Director  
National Institutes of Health  
9000 Rockville Pike  
Bethesda, MD 20892

Dear Dr. Collins:

I write today requesting additional information about the National Institutes of Health's (NIH) possible financial role in the Planned Parenthood Federation of America's (PPFA) recent admission of its role in human organ harvesting.<sup>1</sup> I would like to ensure not only that all laws pertaining to fetal tissue research are being followed, but also that American taxpayer dollars are not being used to fuel the abortion industry in the United States.

Last week, an undercover video surfaced featuring PPFA's Senior Director for Medical Services, Dr. Deborah Nucatola, candidly discussing the coordination between abortion providers and for-profit companies to ensure the efficient harvest of fetal organs.<sup>2</sup> Among other disturbing and potentially illegal admissions, Dr. Nucatola acknowledged modifying abortion procedures in facilities within the PPFA network in order to fill particular customer orders for fetal lungs, livers, and heads. This conduct potentially violates federal and possibly state laws.<sup>3</sup>

Dr. Nucatola also specifically identified StemExpress, a multi-million dollar company based out of Placerville, California, as a fetal tissue client of local PPFA affiliates.<sup>4</sup> StemExpress, like other fetal organ retailers, supplies hospitals, universities, and NIH-sponsored research with stem

<sup>1</sup> As you are aware, NIH is the world's largest supporter of fetal tissue research. In Fiscal Year 2014 alone, NIH allocated \$76 million to private and public institutions in order to study the therapeutic utility of fetal cells.

<sup>2</sup> See generally Steven Ertelt, *Shock Video Catches Planned Parenthood's Top Doctor Selling Body Parts of Aborted Babies*, LIFENEWS.COM (Jul. 14, 2015).

<sup>3</sup> See, e.g., <http://www.grassley.senate.gov/news/news-releases/grassley-makes-inquiries-attorney-general-planned-parenthood-after-video-surfaces> (last viewed Jul. 20, 2015) (noting Chairman Grassley's concern that PPFA's activities might violate federal law); Tex. Penal Code Ann. § 48.02

<sup>4</sup> See generally <http://stemexpress.com/> (last viewed Jul. 20, 2015).

cell lines and intact body parts, some priced over \$24,000 each.<sup>5</sup> This revelation therefore suggests that StemExpress may also be violating several federal laws addressing the use of fetal tissue for medical research.<sup>6</sup>

In light of the above, I request that NIH undertake the following preservation efforts, effective immediately:<sup>7</sup>

1. Preserve all documents, records, and logs, including paper-based documents, e-mail, e-mail-based calendar appointments, electronic documents, and other electronic data (electronic records), created since October 1, 2009, that relate to PPFA or StemExpress, or use the acronyms, words, and/or phrases “PPFA,” “abortion,” “fetal,” “fetal tissue,” “Planned Parenthood,” and/or “StemExpress,” particularly communications with Dr. Nucatola or any other individual employed by, or affiliated with, PPFA, any PPFA affiliate, or StemExpress. For the purposes of this request, “preserve” means taking any and all reasonable steps to prevent the partial or full destruction, alteration, overwriting, formatting, deletion, shredding, incineration, wiping, relocation, migration, theft, revision, or mutation of electronic and non-electronic documents, records, and logs, as well as negligent or intentional handling that would make such records incomplete or inaccessible.
2. Exercise any and all reasonable efforts to identify and notify former NIH employees, contractors, subcontractors, grantees, subgrantees, and consultants (including those in foreign countries) who may have access to such electronic or non-electronic records that these records are also to be preserved.
3. If it is a practice of NIH, any NIH component, any federal employee, any contract employee, any grantee or subgrantee, or any consultant to destroy or otherwise alter such electronic or non-electronic records, either halt such practices immediately, or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

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<sup>5</sup> See J. Haikias et. al, *Conserved and Divergent Aspects of Human T-cell Development and Migration in Humanized Mice*, *Immunol. Cell Biol.* 1-11 (Mar. 31, 2015) available at <http://www.nature.com/icb/journal/vaop/ncurrent/pdf/icb201538a.pdf> (last viewed Jul. 20, 2015) (citing StemExpress as among its sources of human tissue for this research).

<sup>6</sup> See, e.g., 42 U.S.C. § 274e (stating that it is “unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce,” and permitting only “reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ”); *id.* § 289g-1(b)(2) (stating that any HHS-sponsored researcher studying “the transplantation of human fetal tissue” procured from an abortion must obtain both donor consent and a signed statement from the physician declaring that “no alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue”).

<sup>7</sup> I would remind you and all other NIH officials, personnel, contractors, grantees, and consultants that violation of this preservation order is a violation of federal criminal law. See generally 18 U.S.C. § 1505.

Please also provide the following unredacted documents and information for the time period from October 1, 2009, to the present (unless a different time period is specified below):<sup>8</sup>

1. All records relating to the NIH's oversight of research involving fetal tissue, including:
  - a. All copies of patient and principle-researcher consent forms, as well as copies of all attending physician certifications, as is required by 42 U.S.C. 289g-1(b); and
  - b. All other documents and information pertaining to institutional review board (IRB) documentation of fetal tissue suppliers.
2. Copies of all contracts and/or fetal tissue purchase orders that each NIH-sponsored institution has with companies that procure fetal organs.
3. All documentation involving analysis of NIH-supported fetal tissue research for compliance with state and federal law.
4. All documents and information relating to:
  - a. The imposition of fines, imprisonment, or other penalties on non-compliant researchers;
  - b. Any circumstances where NIH had reason to believe it was funding non-compliant researchers but took no action; and
  - c. NIH's internal procedures for the reporting of non-compliant researchers to the appropriate officials or authorities, and, if no such internal procedures exist, a detailed explanation as to why.
5. Copies of all memoranda, standard operating procedures, manuals, and any other internal or external guidance documents instructing researchers on the procurement of fetal tissues.
6. Given that 42 U.S.C. § 289g-1(f) requires the Department of Health and Human Services to publish an annual report describing "whether and to what extent research [involving transplantation of fetal tissue] has been conducted in accordance with this section," please do the following:
  - a. Indicate whether this report is still being annually published; and

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<sup>8</sup> It is important to note that this is a request for a document production to the Committee, and is not a request for *in camera* review of documents in the Department's possession. The requested documents are to be physically transferred in unredacted form to the Committee. Similarly, this is also not a request for the provision of previously released versions of similar or redacted information that may have been made available via Freedom of Information Act requests, since congressional document requests are not restricted by either the Freedom of Information Act or the Privacy Act.

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- b. If this report is still being published, please supply the reports from Fiscal Year 2001-2014, as well as any supplemental or related reporting.
7. All of your electronic and paper communications from August 7, 2009, to the present:
    - a. That relate to or discuss PPFA, any PPFA affiliate, or StemExpress, or any aspect of their respective businesses, even if they are not explicitly mentioned;
    - b. That contain any of the following words, phrases, and/or acronyms: "PPFA," "abortion," "fetal," "fetal tissue," "Planned Parenthood," and/or "StemExpress"; and
    - c. Between you and any employee of PPFA, any PPFA affiliate, or StemExpress, regardless of subject matter.

I would also request that you provide any additional materials that fall into the above categories on a continuing basis but are created, written, or otherwise produced after the Department's initial receipt of this request.

Please provide the requested documents and information as soon as possible, but **no later than 9:00 a.m. on Tuesday, August 4, 2015**. When producing documents to the Committee, please deliver separate production sets to both the Majority Staff in Room 224 of the Dirksen Senate Office Building and the Minority Staff in Room 152 of the Dirksen Senate Office Building.

I appreciate your cooperation in this very important matter and look forward to your response and receipt of the requested material at the stated date and time. Please contact Committee staff at (202) 224-5225 if you have any additional questions about how to comply with the terms of this production request.

Sincerely,



Ted Cruz  
Chairman  
Subcommittee on Oversight, Agency Action,  
Federal Rights and Federal Courts

Attachments

cc: The Honorable Charles E. Grassley  
Chairman  
Senate Committee on the Judiciary

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The Honorable Patrick J. Leahy  
Ranking Member  
Senate Committee on the Judiciary

The Honorable Christopher A. Coons  
Ranking Member  
Subcommittee on Oversight, Agency Action,  
Federal Rights and Federal Courts

The Honorable Sylvia Mathews Burwell  
Secretary  
U.S. Department of Health and Human Services

The Honorable Daniel R. Levinson  
Inspector General  
U.S. Department of Health and Human Services