



## THE COLORADO FREEDOM INSTITUTE

TESTIMONY OF MICHAEL J. NORTON  
PRESIDENT AND GENERAL COUNSEL  
THE COLORADO FREEDOM INSTITUTE

February 15, 2017

### **Regarding House Bill 17-1099 - Termination of State Funding for Higher Education Institutions that Engage in the Trafficking of Aborted Human Body Parts**

My name is Michael J. Norton. I am President and General Counsel of the Colorado Freedom Institute, a non-profit legal organization that focuses on the protection and promotion of religious freedom and the sanctity of human life. I am also an attorney in the private practice of law with the Denver law firm of Thomas N. Scheffel & Associates, P.C.

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.

From 1988 to 1993, having been appointed by President Ronald Reagan, I was privileged to serve as Colorado's United States Attorney. In that capacity, 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, including numerous federal criminal investigations and prosecutions.

## **HB 17-1099**

HB 17-1099 would require higher education institutions that receive State funding to report to the Joint Budget Committee by December 1 of each year whether the institution engaged, directly or indirectly, in the purchase or trafficking of aborted human body parts in the previous year. If an institution did engage in the purchase or trafficking of aborted human body parts, HB 17-1099 would require that the General Assembly not, in the next fiscal year, appropriate any State funds to that university.

HB 17-1099 is a proper response by a civilized society to the disclosures in 2015 and 2016 videos released by the Center for Medical Progress (“CMP”) that Planned Parenthood of the Rocky Mountains was harvesting and selling the lungs, hearts, brains, or other organs of unborn babies to, among others, the University of Colorado and Colorado State University.

No matter how one stands on the issue of abortion, those CMP videos did not simply create a generalized queasiness at surgery and blood, they depicted gross, abhorrent, and evil conduct that should not be allowed to stand unaddressed in our State. Those who have taken time to view these videos know beyond a shadow of a doubt that this should not be happening in our State.

No one who has viewed these videos can come away thinking that Planned Parenthood’s harvesting and selling of the body parts of aborted unborn babies, aided and abetted, by the University of Colorado and Colorado State University, should be permitted in our State. No one who has viewed these videos believes that, in Colorado, we should allow the body parts of aborted babies to be trafficked in the market place as though they were agricultural commodities.

### **Current Colorado Law**

In 2000, several legislators in Colorado recognized the depravity associated with the harvesting and sale of body parts of aborted babies and passed legislation to make such conduct illegal in Colorado. That legislation was codified as C.R.S. § 25-2-111.5: “Transfer of fetal tissue from induced termination of pregnancy.”

The legislative declaration of C.R.S. § 25-2-111.5 states: “The general assembly determines and declares that the acquisition, receipt, or other transfer of human fetal tissue for valuable consideration affects intrastate commerce and is not in the public interest of the residents of Colorado. Therefore, the general assembly finds, determines, and declares that the exchange for valuable consideration of human fetal tissue should be prohibited.” Notably, under Colorado law, “valuable consideration” expressly includes “[a]ny agreement to purchase fetal tissue for a profit.” C.R.S. §

**Current Federal Law**

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.”<sup>1</sup> 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 consideration<sup>2</sup> for the costs associated with such abortion.” 42 U.S.C. § 289g-2(b)(3). Conviction of this crime carries with it a penalty of up to ten years in prison and a fine of up to \$500,000.

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).

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<sup>1</sup> “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/>.

<sup>2</sup> “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).

## **Denver's Planned Parenthood of the Rocky Mountains Caught on Video Trafficking Aborted Baby Body Parts**

In 2015, videos released by the Center for Medical Progress<sup>3</sup> disclosed that Denver's Planned Parenthood 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 Progress. The videos demonstrated that 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.

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 describing over lunch how Planned Parenthood affiliates such as Denver's Planned Parenthood of the Rocky Mountains facilitated trafficking in the organs of aborted unborn babies, all while enjoying her salad and sipping wine. Nucatola discussed prices and confessed that Planned Parenthood's abortionists were happy to alter abortion procedures to further the organ harvesting and trafficking program. One such way, she related, was by using an ultrasound where ordinarily it would not be used to prevent damage to valuable organs of aborted babies.

In her own words, Nucatola can be heard saying:

So then you're just kind of cognizant of where you put your graspers, you try to intentionally go above and below the thorax, so that, you know, we've been very good at getting heart, lung, liver, because we know that, so I'm not gonna crush that part, I'm going to basically crush below, I'm gonna crush above, and I'm gonna see if I can get it all intact. And with the calvarium, in general, some people will actually try to change the presentation so that it's not vertex, because when it's vertex presentation, you never have enough dilation at the beginning of the case, unless you have real, huge amount of dilation to deliver an intact calvarium.<sup>4</sup>

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

<sup>4</sup> *Id.*, Transcript, July 25, 2013, p. 11.

To get the full impact of Nucatola's statements, it is necessary to understand the terminology used. "Calvarium" is medical jargon for "head." "Vertex presentation" means head-first delivery, *i.e.*, the normal presentation. What Nucatola is referring to is repositioning the baby in the womb to enable more effective organ harvesting by Planned Parenthood abortionists. In fact, this is also the repositioning which occurs in the barbaric and unlawful procedure known as "partial-birth" abortions.

These videos have exposed the ghoulish underbelly of Planned Parenthood. In the video taken at Denver's Planned Parenthood of the Rocky Mountains, Inc., released by the Center for Medical Progress on July 30, 2015, Rocky Mountain Planned Parenthood's vice president and medical director, Savita Ginde was captured saying, "[We'd] have to do a little bit of training with the providers on making sure that they don't crush" aborted babies' organs.<sup>5</sup>

Denver's Planned Parenthood of the Rocky Mountains was caught red-handed in engaging in a gross, disgusting, barbaric and probably illegal practice. Later, Planned Parenthood's CEO Cecile Richards, in a virtual admission of guilt, announced that Planned Parenthood affiliates would no longer accept any "reimbursement" for sales of fetal tissue. Not that Planned Parenthood has done anything illegal, said Richards, but Planned Parenthood is going to stop taking money for baby body parts.

No one really knows whether Denver's Planned Parenthood has stopped taking money for trafficking in harvested baby parts. Powerful government allies, including allies here in Colorado and in this General Assembly, have so far shielded Planned Parenthood from any accountability for this gruesome conduct.

### **The University of Colorado and Colorado State University Have Purchased Baby Body Parts**

We know that at least two of Colorado's higher education institutions – the University of Colorado and Colorado State University – have, in the past used State taxpayer funds to purchase lungs, hearts, brains, or other organs of unborn babies.

As the attached February 16, 2016 letter from CU Chancellor Elliman and the July 23, 2015 letter from CSU President Tony Frank reveal, these State universities acknowledge that they aid and abet Planned Parenthood's illegal conduct by purchasing aborted baby parts. They simply cannot bring themselves to do the right thing – a decision the vast majority of Coloradans know to be right – and pledge to

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<sup>5</sup> Center for Medical Progress, Transcript, April 2, 2015, Planned Parenthood of the Rocky Mountains, Inc., p. 14.

make no further purchases of the lungs, hearts, brains, or other organs of unborn babies whose lives have been terminated by abortion.

I am aware that Representative Leonard has offered to provide the Committee with copies of invoices showing purchases by both CU and CSU of aborted baby body parts. If it would be of any value to the Committee, I will also provide copies of such invoices.

**No Colorado Official Takes Responsibility  
For the Enforcement of Current Colorado law**

Unfortunately, to date, no Colorado Executive Branch agency has taken any responsibility for the enforcement of current Colorado law.

When pressed to investigate the patently illegal conduct of Denver's Planned Parenthood depicted in the Center for Medical Progress videos, the Colorado Attorney General acknowledged<sup>6</sup> that she was "closely monitor[ing] developments related to this controversy." Nevertheless, the Attorney General contended that, unless she was specifically requested by the Governor to investigate this "controversy," she "lack[ed] authority to enforce" the provisions of C.R.S. 25-2-111.5.

Of course the Governor, ever the friend and protector of Denver's Planned Parenthood, has not bothered to ask the Attorney General to investigate this "controversy." And, it cannot be expected that he ever will.

Likewise, the Colorado Department of Public Health and Environment, an agency under Governor Hickenlooper's authority, has stonewalled requests that it investigate these gruesome practices by Denver's Planned Parenthood. It is not known whether any official of the Colorado Department of Public Health and Environment has even bothered to view the Center for Medical Progress videos, including the video depicting the patently illegal conduct by Denver's Planned Parenthood of the Rocky Mountains. Astonishingly, however, the Colorado Department of Public Health and Environment has taken the position that "there is no credible evidence of wrongdoing" by Denver's Planned Parenthood of the Rocky Mountains.

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<sup>6</sup> Attorney General Coffman's October 15, 2015 letter expressing her view that her department lacks legal authority to investigate the harvesting and trafficking of the body parts of aborted babies is attached.

**The United States Congress Has Acted and  
Referred Several Abortionists, including Planned Parenthood,  
For Criminal Prosecution**

In April 2016, by virtue of my law enforcement experience, I was asked to testify before the Select Committee on Infant Lives of the U.S. House of Representatives' Energy and Commerce Committee about its investigation of potential violations of 42 U.S.C. 289g-2. I advised the Select Panel that, in my opinion, there was probable cause to believe that this statute had been violated and that there should be an aggressive investigation and, should the facts support it, the prosecution of these criminal violations by appropriate federal criminal justice authorities. It was my view and that of my former Justice Department colleagues who testified at that hearing that "a competent, ethical federal prosecutor could establish probable cause that both the abortion clinics and the procurement business violated the statute (42 U.S.C. § 289g-2), aided and abetted one another in violating the statute (18 U.S.C. § 2), and likely conspired together to violate the statute (18 U.S.C. § 371)."

In December 2016, the U.S. House Select Committee and the U.S. Senate Judiciary Committee forwarded to federal prosecutors alleged criminal charges against Planned Parenthood affiliates and medical laboratories doing business with Planned Parenthood. These referrals maintain that Planned Parenthood and its business agents have been engaged in the illegal sale of the body parts of aborted preborn children.

Both the Chair of the U.S. House Select Committee, Marsha Blackburn of Tennessee, and the chair of and the U.S. Senate Judiciary Committee, Chuck Grassley of Iowa, expressed dismay at the lack of enforcement by federal officials of laws banning the for-profit sale of the hearts, lungs, livers, and brains of aborted children. Senator Grassley added, "With no executive branch oversight and no meaningful risk of prosecution, the companies involved in transferring fetal tissue have been free to receive substantial payments with impunity. Unless there is a renewed commitment by everyone involved against commercializing the trade in aborted fetal body parts for profit, then the problem is likely to continue."

**Failure to Pass this Bill  
Amounts to Protecting a Criminal Enterprise**

There is enough evidence, already presented to the Governor and to the Attorney General, to demonstrate that there is probable cause to believe that Planned Parenthood has violated federal and Colorado statutes. Indeed, Planned Parenthood is a criminal, corrupt organization under criminal investigation in several states.

Colorado should be one of those states. There is enough evidence to demonstrate that Colorado's higher education institutions – University of Colorado and Colorado State University – have aided and abetted Planned Parenthood in the violation of these statutes by knowingly buying aborted baby body parts.

And yet not one Colorado official has had the courage to investigate these potential crimes. That is because Planned Parenthood is a powerful partisan political organization that has donated millions of dollars to pro-abortion politicians, perhaps even some of you on this Committee.

Some of those politicians do all they can to protect this corrupt, criminal enterprise. You should criminalize the sale or donation of aborted baby body parts.

But, until you do, passage of HB 17-1099 to defund any Colorado higher education institutions that can't stop itself from buying the lungs, hearts, brains, or other organs of unborn babies whose lives have been terminated by abortion is a necessary and right first step.

You all know the Edmund Burke quote: "All that is necessary for the triumph of evil is that good men [and women] do nothing." I implore you to not promote evil and bring shame yourself and our State by opposing this bill.

Thank you.

CYNTHIA H. COFFMAN  
Attorney General  
DAVID C. BLAKE  
Chief Deputy Attorney General  
MELANIE J. SNYDER  
Chief of Staff  
FREDERICK R. YARGER  
Solicitor General



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DEPARTMENT OF LAW

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Office of the Attorney General

October 15, 2015

Michael J. Norton  
Senior Counsel  
Alliance Defending Freedom  
Greenwood Corporate Plaza, Building No. 3  
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Greenwood Village, CO 80111

*Mike*

Dear ~~Mr.~~ Norton:

Thank you for your letter dated July 21, 2015 addressed to Governor Hickenlooper, in care of my office.<sup>1</sup> I am also aware of other communications and concerns expressed by members of your organization directly to my office related to the controversy surrounding Rocky Mountain Planned Parenthood, Inc.'s receipt of public dollars and the alleged illegal sale of fetal tissues. The office continues to closely monitor developments related to this controversy, but as has been explained, we lack legal authority to act independently of other government entities that are specifically authorized by law to address your complaints.

The transfer for valuable consideration of fetal tissue from an induced termination of pregnancy is illegal in Colorado. § 25-2-111.5, C.R.S. However, the Office of the Attorney General lacks authority to enforce this provision of law. When the law was enacted in 2000, the General Assembly assigned specific authority for enforcement to the Colorado Department of Public Health and Environment (CDPHE). § 25-2-111.5 (3)-(4), C.R.S. (empowering the state registrar, which is housed within CDPHE, to fine physicians or institutions that violate the statute and granting CDPHE authority to promulgate rules "related to enforcement activities necessary to implement" the statute). Under well-established canons of statutory construction, the specific assignment of enforcement authority to a particular government agency trumps general enforcement

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<sup>1</sup> I am responding on my own behalf and not on behalf of Governor Hickenlooper.

authority under the common law.<sup>2</sup> When the General Assembly assigned authority to CDPHE to enforce the statute and to the relevant district attorney to prosecute alleged violations of the law, it simultaneously removed any potential authority of my office to investigate or enforce that law. That was the policy choice made by the General Assembly in 2000, and any concerns about the wisdom of that decision should be directed to the General Assembly, which can revisit it at any time.

Further, the Attorney General's general authority to prosecute crimes committed in Colorado has also been limited by the General Assembly. *People ex rel. Tooley v. District Court*, 549 P.2d 774, 776–77 (1976) (“[I]n the absence of a command from the governor or the general assembly, the attorney general is not authorized to prosecute criminal actions.”). If the General Assembly were to revisit the Attorney General's authority to bring independent prosecutions without reliance on referral from executive branch agencies or the approval of a district attorney, our office would exercise such authority with due diligence. As the drafters of our Constitution understood when they created a plural executive, checks and balances apply in state government as well as at the federal level. But in Colorado, those checks and balances often involve policy determinations made by the legislature. As the chief law enforcement officer in the State, the Attorney General is bound foremost by the rule of law, which restricts my ability to act independently under the circumstances.<sup>3</sup>

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<sup>2</sup> “If a statute creates legal duties and provides a particular means for their enforcement, the designated remedy excludes all others.” *Minnick v. Denver*, 784 P.2d 810, 812 (Colo. App. 1989); *see also Henry v. Kemp*, 829 P.2d 505, 506 (Colo. App. 1992) (“[I]f a statute provides a specific means of enforcing legal duties that were unknown at common law, that statutory remedy will be considered exclusive.”). This reflects the background rule that specific statutory provisions control over general legal principles. *See, e.g.*, § 2-4-205, C.R.S. (“[A] special or local provision prevails as an exception to [a] general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.”); *Telluride Resort & Spa, L.P. v. Colo. Dep't of Revenue*, 40 P.3d 1260, 1265 (Colo. 2002) (“If different statutory provisions cannot be harmonized, the specific provision controls over the general provision.”).

<sup>3</sup> While it is clear that my office lacks enforcement authority under the statute, it is likely that the district attorney in the jurisdiction in which an alleged violation occurred has criminal jurisdiction to investigate, and if the facts justify, prosecute a case for criminal penalties under the statute. *See* § 25-2-118(2), C.R.S. (creating criminal penalties for willful violations of Title 25, Article 2). District attorneys are independently authorized to prosecute criminal matters within their jurisdictions. § 20-1-102, C.R.S. (district attorneys “shall appear on behalf of the state in all indictments, actions, and proceedings which may be pending in the district court in any county within his district wherein the state or the people thereof or any county of his district may be a party.”).

The Alliance Defending Freedom also has raised the issue of whether public dollars received by Rocky Mountain Planned Parenthood, Inc. indirectly fund abortions in violation of Article V, Section 50 of the Colorado Constitution. As you are aware, this issue is currently in litigation initiated prior to my taking office, and that litigation is pending before the Colorado Court of Appeals in *Norton v. Rocky Mountain Planned Parenthood, Inc., et al.* My office continues to defend the Governor of Colorado in that lawsuit, as it has done since 2013. This office has and will continue to comply with its legal mandate. But to be clear, the policy question at issue is not mine to make.

I appreciate your concerns and recognize the strongly held beliefs behind them, but under the current law of the State of Colorado, redress of your complaints can only be found with those entities of state government with authority to act.

Most sincerely yours,

A handwritten signature in black ink, appearing to read "Cynthia H. Coffman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Cynthia H. Coffman  
Attorney General

cc: The Honorable John Hickenlooper, Governor of the State of Colorado



University of Colorado  
Anschutz Medical Campus

February 16, 2016

The Honorable Doug Lamborn  
2402 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Lamborn:

In September 2015, the University of Colorado Anschutz Medical Campus wrote to you after you inquired about fetal tissue research occurring on campus. Today, I am writing to inform you that the university's previous document production was incomplete and to provide additional documents and corrective information.

Specifically, you previously inquired whether the campus had purchased any human fetal tissue from either Stem Express or Advanced Bioscience Resources. At the time we responded to your letter, we queried the University of Colorado's centralized procurement office and responded that we had been unable to find any records of purchases from Stem Express or Advanced Biosciences Resources.

In response to another inquiry on the use and procurement of human fetal tissue, the campus again searched for any records of transactions with Advanced Bioscience Resources. We found ten distinct invoices from transactions where faculty members procured human fetal tissue from Advanced Bioscience Resources. Unfortunately, these invoices were not in our September 2015 document production to you. I have therefore included with this letter those invoices, as well as other documents we have been able to locate between the University of Colorado and Advanced Bioscience Resources that pertain to those purchases. I would like to note that individual information has been redacted from these documents to allow those involved the ability to pursue their research in a secure place and manner.

The reason for this oversight is that the ten above-referenced invoices were from purchases made through individually-issued university credit cards, rather than through purchase orders. Although the university searched for both purchase order and credit card transactions at the time of your request, credit card data is often more difficult to search and, upon manual review of over 1.3 million lines of transactions potentially responsive to your request, the referenced invoices were overlooked. The records were discovered in response to the most recent request based on information from individual researchers who made the purchases.

While this mistake is regrettable, the university has found no evidence that the people performing the search acted intentionally to avoid your inquiry. Moreover, the university is taking the following corrective actions:

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OFFICE OF THE CHANCELLOR

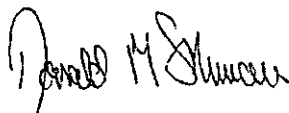
Building 500 | Mail Stop F565 | 13001 East 17th Place | Aurora, Colorado 80045  
Phone 303 724 8900 | [www.ucdenver.edu](http://www.ucdenver.edu)

- First, the centralized procurement office will impose a rule prohibiting the procurement of fetal tissue with a university credit card, no matter the value of the purchase.
- Second, consistent with a new policy that is being implemented at the Anschutz Medical Campus, any purchase of fetal tissue may only be made through a purchase order or other contract.
- Third, that purchase order or other contract will have to include a certification that the vendor complies with all state and federal laws, specifically 42 U.S.C. 289g-1 and 289g-2, which prohibit the acquisition of human fetal tissue for valuable consideration or profit.
- Fourth, all human fetal tissue research reviewed by the Colorado Multiple Institution Review Board, Institutional Animal Use or Animal Care Committee, the Institutional Biosafety Committee, and/or the Anschutz Medical Campus Scientific Ethics Committee, will include researcher attestations that the use of human fetal tissue is consistent with all state and federal laws.
- Fifth, we will be changing the processes by which we search for procurement data to not only use the formal names of the vendors, but also potential abbreviations and other identifiers. We will also cross reference databases and perform a more detailed manual search of potential transactions.

We believe these steps will avoid the mistakes that caused the university to respond inaccurately to your initial inquiry. As a public institution, the University of Colorado is committed to the highest standards of transparency and integrity. I apologize that we did not meet either your or our expectations.

We would be happy to meet with you to discuss the information described in this response. Please do not hesitate to contact me or our Vice President of Governmental Relations, Tanya Kelly-Bowry.

Sincerely,



Donald M. Elliman, Jr.  
Chancellor  
University of Colorado Anschutz Medical Campus



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July 23, 2015

The Honorable Doug Lamborn  
United States House of Representatives  
2402 Rayburn House Office Building  
Washington, D.C. 20515

Congressman Lamborn:

I am writing in response to your letter dated July 17, 2015, which concerns the allegations against Planned Parenthood Federation of America and Colorado State University's use of fetal cells in federally funded research. I fully understand the concerns that have been expressed by you and others. As you know, Congress has now announced its intent to investigate the practices of those engaged in the acquisition of human tissue for research purposes, and it is our sincere hope that this will lead to greater transparency for all involved. As a research university, we welcome all efforts that allow us access to more information as we navigate the ethical waters associated with several research areas.

Since receiving your letter, I have reviewed the video that was released by the Center for Medical Progress; sought clarification on the points of law you've raised; and discussed the issue further with Colorado state Senator Kevin Lundberg, who provided additional insight. We also convened our Bioethics Advisory Committee to assess the known facts and make a recommendation directly to me regarding University practices going forward. The report of that committee is attached.

With respect to the legal question in your letter, we do not believe that Colorado State University has violated federal or Colorado state law. The Colorado law referenced in your letter, C.R.S. § 25-2-111.5, is directed at physicians and institutions that perform procedures for the induced termination of pregnancy, which Colorado State University does not perform. CSU is also compliant with federal law on this issue. CSU follows all federal regulations and protocols related to the use of human tissue samples, and federal regulators and other officials regularly review CSU's research programs to ensure bioethical and legal compliance.

Colorado State has only one research project that uses human fetal tissue in research, for an NIH-funded investigation into a cure for HIV/AIDS. This research is fully compliant with state and federal law, and this project does not obtain any tissue directly from physicians or institutions that perform procedures for the induced termination of pregnancies, including Planned Parenthood. Any tissue used for research must be obtained legally and in compliance with federal and state regulations, and CSU only obtains tissue from FDA regulated and approved providers. The tissue is obtained in very minute sample sizes for research conducted at the cellular level using cells extracted from these small amounts of liver and thymus tissue; we do not obtain or use full organs or body parts in this research program, although we can understand how someone could mistakenly reach that conclusion based on the wording of the StemExpress invoices in question.

In the past, Colorado State University has obtained donated fetal tissue from StemExpress, which is FDA regulated and approved, although we have not received any tissue samples from StemExpress since 2013. The invoices related to the acquisition of donated fetal tissue from StemExpress in 2013 are attached. We had not been aware of any issues concerning StemExpress until this recent controversy – nor had we seen the company's promotional flyer that has since been shared with us. The source of tissue for the CSU research since 2013 is ABR. It is our understanding that ABR does not work via a for-profit model for fetal tissues; they only reimburse for costs incurred.

In light of your and other concerns, and while CSU has appropriately followed all state and federal laws in regard to conduct of this research, I am accepting the recommendation of CSU's Bioethics Advisory Committee to suspend any further acquisition of fetal tissue from StemExpress or other vendors implicated in the Planned Parenthood investigation pending the outcome of the Congressional inquiry.

The committee also recommended that all efforts should be made to seek alternatives to aborted fetal tissue sources, where such alternatives allow key research to continue – a recommendation that we will implement immediately. In addition, we also will request from all tissue providers all available information regarding the source of fetal tissue. With this information, our institution and researchers can continue to assure that when research is conducted, we do so meeting our ethical standards.

As I noted at the beginning of this letter, and as our Bioethics committee states in the attached report, we also want to encourage further federal oversight of fetal tissue providers that would result in greater transparency of their sources. This is an appropriate role for the federal government, and it would be a benefit to CSU and the hundreds of other research universities actively and more fully engaged in this field.

We are unable to address your specific questions related to tissue sources, as these are questions for the providers. We work diligently to ensure we are working with regulated, compliant providers, but we are not regulators and do not have access to the specific information you are seeking.

Colorado State University is a leader in the ethical conduct of research, and we always welcome concerns such as yours as we seek to uphold our academic and research missions. The research in question is medically important and fully compliant with all federal and university regulation, and CSU is proud that this program already has led to significant breakthroughs in the fight against HIV/AIDS. The faculty involved, and the university, care deeply about their ethical obligations and the importance of obtaining tissue only from compliant sources. This is not an issue that any of us takes lightly, and we will be closely following the Congressional investigation.

Thank you for alerting us to your concerns and providing CSU an opportunity to respond.

Sincerely,

  
Tony Frank  
President