

October 22, 2015

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By Hand Delivery

The Honorable Jason Chaffetz
Chairman, Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6134

Re: *Subpoena to The Center for Medical Progress Issued on September 15, 2015*

Dear Mr. Chairman:

I write on behalf of the National Abortion Federation (“NAF”) concerning a matter of utmost importance regarding an alleged leak of materials provided to the House Committee on Oversight and Government Reform (“the Committee”) in response to a subpoena that the Committee served on The Center for Medical Progress (“CMP”).

Specifically, in connection with the Committee’s investigation into federal funding of Planned Parenthood, the Committee issued a subpoena *duces tecum* to CMP on September 15, 2015, requesting all unedited video footage relating to the acquisition, preparation, and sale of fetal tissue by Planned Parenthood and its affiliates. A subset of that information is protected from public disclosure by a temporary restraining order (“TRO”) issued by the United States District Court for the Northern District of California pending resolution of ongoing legal proceedings between NAF and CMP (among others), as well as the District Court’s Protective Order.¹ The District Court in the underlying litigation has repeatedly found that the public disclosure of this information would likely cause irreparable harm to NAF’s members in the form of “harassment, intimidation, violence, invasion of privacy, and injury to reputation.”² The District Court stated in its order allowing CMP to provide a

¹ Temporary Restraining Order and Order to Show Cause in Support of Plaintiff’s Application for Temporary Restraining Order, Docket No. 15, Case No. 3:15-cv-03522 (N.D. Cal. July 31, 2015); *see also* Order Keeping Temporary Restraining Order in Effect Until Resolution of Request for Preliminary Injunction, Docket No. 27, Case No. 3:15-cv-03522 (N.D. Cal. Aug. 3, 2015); Stipulated Protective Order for Purposes of Expedited Preliminary Injunction Discovery, Docket No. 92, Case No. 3:15-cv-03522-WHO (N.D. Cal. Aug. 26, 2015).

² Temporary Restraining Order and Order to Show Cause in Support of Plaintiff’s Application for Temporary Restraining Order, Docket No. 15, Case No. 3:15-cv-03522 (N.D. Cal. July 31, 2015); *see also* Order Keeping Temporary Restraining Order in Effect Until Resolution of Request for Preliminary Injunction, Docket No. 27,

October 22, 2015
Page Two

response to the Committee's subpoena that it believed this Committee would "exercise [its] powers responsibly and with due regard for the rights of affected parties."³ And when the Committee received these materials, you yourself, Mr. Chairman, stated that the materials "will not be released to the public at this time," in order to "ensure the safety and security of all individuals recorded," assurances for which we were very grateful.⁴

On Tuesday evening, October 20, 2015 however, an individual by the name of Charles Johnson began publishing clips of video files that are in the Committee's possession and that are covered by the Federal Court's TRO.⁵ In the article accompanying the clip, Johnson claims that he received "all of the videos" covered by the Federal Court's TRO "from a source on Capitol Hill." The article further states that Johnson is going to be "publishing the rest of the videos here over the coming days." According to Johnson, he and David Daleiden (CMP's "CEO" who orchestrated the illegal video smear campaign that is the subject of NAF's lawsuit) are close personal friends.⁶ Even after Johnson was personally served with the Federal Court's TRO on Wednesday evening, October 21, 2015, Johnson caused to be published on the internet another 11 video clips that were provided to Congress and covered by the Federal Court TRO. Johnson, in this latest leak, continues to insist that the materials he received were "turned over by Congressional whistleblowers." NAF is working with YouTube to block access to this second set of TRO materials for violating its terms of service.

We are raising this matter with the Federal Court to determine the extent to which Daleiden, Johnson's personal friend since 2007, may have been behind these leaks. But now that a claim has been made that a leak from this Committee has occurred, and an individual is publishing material covered by the Court's TRO that was turned over to the Committee last week, we respectfully urge the Committee to take immediate action to investigate that claim, and to take any and all steps necessary to maintain the confidentiality of the TRO materials. Having insisted that CMP disclose these sensitive materials to the Committee despite a Federal Court TRO, the Committee has a responsibility to maintain the confidentiality of that material, as you have already recognized, Mr. Chairman, and it is a responsibility we have no doubt you take very seriously. We are certain that you will agree that any leak of materials in the Committee's possession to a personal friend of David Daleiden's would call into question the integrity, impartiality, and fairness of this Committee's investigation.

Case No. 3:15-cv-03522 (N.D. Cal. Aug. 3, 2015); Order re Congressional Subpoena, Docket No. 155, Case No. 3:15-cv-03522 (N.D. Cal. Aug. 3, 2015) at 2 ("I remain concerned about the threat of irreparable injury to the privacy rights of NAF's members, shown by NAF through the history of violence against providers of abortion care and the specific acts of intimidation against NAF members, including death threats, harassment and reputational harm, apparently caused by the release of defendants' videos prior to the TRO.").

³ See Order re Congressional Subpoena, Docket No. 155, Case 3:15-cv-03522-WHO (N.D. Cal. Oct. 6, 2015).

⁴ See <https://oversight.house.gov/release/chaffetz-statement-planned-parenthood-video-footage>.

⁵ <http://gotnews.com/breaking-video-planned-parenthood-rep-we-cant-stop-affiliates-from-breaking-the-law/>.

⁶ <http://gotnews.com/the-man-behind-the-plannedparenthood-video-and-me/>.

October 22, 2015
Page Three

Moreover, we simply cannot emphasize enough the serious risk of irreparable harm to NAF's members that would result from the continued public disclosure of their sensitive, personal information. The recent escalation of anti-abortion violence and FBI warnings of arsons and threats against Planned Parenthood employees only underscores the terrible consequences of the unauthorized disclosure of abortion providers' sensitive, personal information.⁷ And as you know firsthand, Mr. Chairman, having someone improperly access and disclose your sensitive, personal information is "intimidating," "scary," and crosses lines that "should never be crossed."⁸ If a leak has occurred, as Johnson claims, then a line has been crossed that should never have been crossed.

Having committed to maintain the confidentiality of these materials, we know that you will treat this matter with the seriousness that it deserves. We thank you for your attention and look forward to your prompt response.

Please feel free to reach out to me directly if you have any questions.

Sincerely,



Derek F. Foran

cc: The Hon. Elijah E. Cummings
Ranking Member, Committee on Oversight and Government Reform

⁷ 9News, *FBI Warning About Planned Parenthood Threats*, September 20, 2015, available at <http://www.9news.com/story/news/local/2015/09/20/fbi-warning-about-planned-parenthood-threats/72545866/>; International Business Times, *Reproductive Healthcare Facility Attacks Rising Amid Debate Over Planned Parenthood's Funding, FBI Warns*, September 19, 2015, available at <http://www.ibtimes.com/reproductive-healthcare-facility-attacks-rising-amid-debate-over-planned-parenhoods-2104905>; NPR, *Fire At Washington State Planned Parenthood Clinic Deemed Arson*, September 5, 2015, available at <http://www.npr.org/sections/thetwo-way/2015/09/05/437829915/fire-at-washington-state-planned-parenthood-clinic-fire-deemed-arson>; LATimes, *Arson Investigation Underway at Planned Parenthood in Thousand Oaks*, October 1, 2015, available at <http://www.latimes.com/local/lanow/la-me-ln-suspicious-fire-planned-parenthood-20151001-story.html>; The Atlantic, *Arson Against Planned Parenthood*, October 1, 2015, available at <http://www.theatlantic.com/national/archive/2015/10/planned-parenthood-arson/408511/>; ThinkProgress, *Planned Parenthood Clinics Targeted With Vandalism And Arson In The Wake Of Released Videos*, October 2, 2015, available at <http://thinkprogress.org/health/2015/10/02/3708084/abortion-clinic-vandalism/>; NOLA, *Man Accused of Vandalizing Metairie Abortion Clinic Signs Booked with Hate Crime*, August 19, 2015, available at http://www.nola.com/crime/index.ssf/2015/08/man_accused_of_vandalizing_met.html; RH Reality Check, *Planned Parenthood Clinic Construction Site Vandalized in New Orleans*, August 3, 2015, available at <http://rhrealitycheck.org/article/2015/08/03/planned-parenthood-clinic-construction-site-vandalized-new-orleans/>.

⁸ Congressman Chaffetz's Statement on the Unauthorized Access of Personal Information by the Secret Service, dated September 30, 2015, available at <https://oversight.house.gov/release/chaffetz-statement-unauthorized-access-personal-information-secret-service/>.