

No. 22-1135

IN THE
Supreme Court of the United States

CENTER FOR MEDICAL PROGRESS; BIOMAX
PROCUREMENT SERVICES, LLC; AND
DAVID DALEIDEN,
Petitioners,

v.

NATIONAL ABORTION FEDERATION,
Respondent.

*On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit*

**BRIEF OF AMICUS CURIAE JUDICIAL
WATCH, INC. IN SUPPORT OF PETITIONERS**

Meredith L. Di Liberto
JUDICIAL WATCH, INC.
425 Third Street SW
Washington, DC 20024
(202) 646-5172
mdiliberto@judicialwatch.org

Counsel for Amicus Curiae

Dated: July 6, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTERESTS OF THE *AMICUS CURIAE*1

SUMMARY OF ARGUMENT.....2

ARGUMENT3

 A. The Petition Presents an Important Public
 Issue Which Warrants This Court’s
 Attention.....3

 1. Federal Investigations8

 2. Federal Legislative Actions11

 3. Federal Executive Responses13

 4. Presidential Campaign Responses13

 5. State Investigations.....15

 6. State Legislative and Executive
 Actions16

 7. Private Business Responses19

 8. Public Reactions and Responses20

 9. University Responses22

 10. International Response23

B. The Ninth Circuit's Decision Has Caused Substantial Adverse Consequences.....	24
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases	Page(s)
<i>De Jonge v. Oregon</i> , 299 U.S. 353 (1937)	6
<i>Ex Parte Quirin</i> , 317 U.S. 1 (1942)	3
<i>Kleindienst v. Mandel</i> , 408 U.S. 753 (1972)	4
<i>Lamont v. Postmaster General</i> , 381 U.S. 301 (1965)	4-5
<i>Lane v. Franks</i> , 573 U.S. 228 (2014)	6-7
<i>Lau v. Nichols</i> , 414 U.S. 563 (1974)	3
<i>Martin v. Struthers</i> , 319 U.S. 141 (1943)	4
<i>McGoldrick v. Berwind-White Coal Mining Co.</i> , 309 U.S. 33 (1940)	3
<i>Raley v. Ohio</i> , 360 U.S. 423 (1959)	3
<i>Roth v. United States</i> , 354 U. S. 476 (1957)	7

<i>Stanley v. Georgia</i> , 394 U.S. 557 (1969)	4
<i>Terminiello v. Chicago</i> , 337 U.S. 1 (1949)	6
<i>United States v. Republic Steel Corp.</i> , 362 U.S. 484 (1960)	3
<i>United States v. Socony-Vacuum Oil Co.</i> , 310 U.S. 150 (1940)	3
<i>United States v. Union Pac. R.R. Co.</i> , 353 U.S. 112 (1957)	3
<i>Virginia State Board of Pharmacy v. Virginia Citizen Consumer Council</i> , 425 U.S. 748 (1976)	4, 5

Miscellaneous

40 Days for Life, https://www.facebook.com/40DaysforLife TC/posts/793728024065736/ (last visited July 23, 2023)	22
American Center For Law and Justice, “Stop Biden’s Pro-Abortion, Anti-Life HHS Nominee Becerra,” https://aclj.org/pro-life/ stop-bidens-pro-abortion-anti-life-hhs- nominee-becerra (last visited July 3, 2023)	21

- S. Armour, “Planned Parenthood Stops Taking Reimbursements for Fetal Tissue,” *The Wall Street Journal*, October 13, 2015, <https://www.wsj.com/articles/planned-parenthood-stops-taking-reimbursements-for-fetal-tissue-1444744800>.....19
- Associated Press, “Court: Texas, Louisiana can end Planned Parenthood funding,” *November 23, 2020*, <https://apnews.com/article/new-orleans-health-abortion-medicaid-courts-d2d02c39dafacd820308f8f99aaf5fd6>.....16
- L. Bartkoukis , “These Companies Have Directly Supported Planned Parenthood,” *Townhall*, July 27, 2015, <https://townhall.com/tipsheet/leahbarkoukis/2015/07/27/these-companies-have-directly-supported-planned-parenthood-n2031007>..... 20-21
- Dr. S. Berry, “20 States Ask Supreme Court to Release Videos Exposing Planned Parenthood,” *Breitbart*, September 9, 2017, <https://www.breitbart.com/politics/2017/09/09/20-states-ask-supreme-court-release-videos-exposing-planned-parenthood/>18
- M. Bilger, “Pro-Life Groups Demand Kamala Harris Resign After Raiding David Daleiden’s Home, Stealing Videos,” *Lifesite News*, April 7, 2016, <https://www.lifenews.com/2016/04/07/pro-life-groups-demand-kamala-harris-resign-after-raiding-david-daleidens-home-stealing-videos/> 21-22

M. Carlson, “Gov. Bentley cutting off state funding to Planned Parenthood, WFSA12 News, August 6, 2015, <https://www.wsfa.com/story/29728146/gov-bentley-cutting-off-state-funding-to-planned-parenthood/>.....17

CBS News Colorado, “CSU Changing Policy Regarding Fetal Tissue,” July 30, 2015, <https://www.cbsnews.com/colorado/news/csu-caught-up-in-sale-of-fetal-tissue-controversy/>.22

Committee on the Judiciary United States Senate, 114th Congress, Human Fetal Tissue Research, available at:<https://www.judiciary.senate.gov/imo/media/doc/-2016-1213%20MAJORITY%20REPORT%20%20Human%20Fetal%20Tissue%20Research%20-%20Context%20and%20Controversy.pdf>8

K. Coyle, “Republican Effort to Defund Planned Parenthood 2015,” Ballotpedia, https://ballotpedia.org/Republican_effort_to_defund_Planned_Parenthood,_2015 (last visited July 3, 2023)8, 11, 12, 13

P. Cunningham, “Abortion opponents to protest Planned Parenthood nationwide,” Washington Examiner, August 22, 2012, <https://www.washingtonexaminer.com/abortion-opponents-to-protest-planned-parenthood-nationwide>21

- D. Daleiden, “Power Hungry Culture-Warrior
Xavier Becerra Should Be Nowhere Near
HHS,” National Review, February 24, 2021,
<https://www.nationalreview.com/2021/02/power-hungry-culture-warrior-xavier-becerra-should-be-nowhere-near-hhs/>21
- D. Daleiden, “University of Pittsburgh Won’t
Explain its Planned Parenthood Ties,”
Newsweek, May 26, 2021,
<https://www.newsweek.com/university-pittsburgh-wont-explain-its-planned-parenthood-ties-opinion-1594564> 15
- A. DeSanctis, “Big Abortion v. David Daleiden”,
Human Life Review, published May 21, 2012,
<https://eppc.org/publication/big-abortion-v-david-daleiden/>24, 25
- A. Dobuzinskis, “U.S. Department of Justice
investigating fetal tissue transfers,” Reuters,
December 8, 2017, <https://www.reuters.com/article/us-usa-plannedparenthood/u-s-department-of-justice-investigating-fetal-tissue-transfers-idUSKBN1E20HA?feedType=RSS&feedName=topNews> 11
- S. Ferris, “Medical company cuts ties with Planned
Parenthood,” The Hill, August 14, 2015,
<https://thehill.com/policy/healthcare/251173-medical-company-cuts-ties-with-planned-parenthood/> 19

B. Fischer, “Major Companies Reject Planned Parenthood,” American Family Association, July 24, 2015, <https://www.afa.net/the-stand/family/2015/07/major-companies-reject-planned-parenthood/>20

M. Fox, “Trump Administration cancels FDA fetal tissue contract,” NBC News, September 28, 2015, <https://www.nbcnews.com/health/health-news/trump-administration-cancels-fda-fetal-tissue-contract-n913051>13

T. Frandsen, “Katie Galloway of Planned Parenthood Association of Utah,” Salt Lake City Weekly, September 16, 2015, <https://www.cityweekly.net/utah/karrie-galloway-of-planned-parenthood-association-of-utah/Content?oid=2986343>.....16

J. Glenza, “Planned Parenthood ends fetal tissue payments: how did we get here?,” The Guardian, October 15, 2015, <https://www.theguardian.com/us-news/2015/oct/15/planned-parenthood-fetal-tissue-payments>15, 16

D. Hipp, “Kansas Gov. Ends State Planned Parenthood Funding,” Courthouse News Service, January 14, 2016, <https://www.courthousenews.com/kansas-gov-ends-state-planned-parenthood-funding/>17

O. Kittel, “Misinformer of the Year,” Media Matters for America, December 17, 2015, <https://www.mediamatters.org/plannedparenthood/misinformer-year-center-medical-progress>14

- L. Kreutz, “Hillary Clinton Calls Planned Parenthood Videos “Disturbing,” ABC News, July 29, 2015, <https://abcnews.go.com/Politics/hillary-clinton-calls-planned-parenthood-video-disturbing/story?id=32757475>14
- D. Langhorn, “Firms reach \$7.8 million settlement over allegations of selling fetal tissue,” December 12, 2017, <https://www.latimes.com/local/lanow/la-me-fetal-tissue-20171209-story.html>.....19
- Live Action, "Members of European Parliament Call on EU to Defund Planned Parenthood Until Investigation into U.S. Video Scandal Are Carried Out in Europe," October 16, 2015, <https://www.liveaction.org/members-of-european-parliament-call-on-eu-to-defund-planned-parenthood-until-investigations-into-u-s-video-scandal-are-carried-out-in-europe/>.....23
- K. McIntyre, “3 States Defund and 13 States Investigate Planned Parenthood,” The Daily Signal, August 14, 2015, <https://dailysignal.com/2015/08/13/3-states-defund-and-13-states-investigate-planned-parenthood/>15
- Missouri Right to Life, October 2015, <https://missourilife.org/wp-content/uploads/2020/02/october-2015.pdf>22

PA Family Institute, “Pa. bill would help provide compassionate options for women and families,” December 21, 2021, <https://pafamily.org/2021/12/13/pa-bill-would-help-provide-compassionate-options-for-women-and-families/>.....17

S. Reardon, “Trump Administration Halts Fetal-Tissue Research by Government Scientists,” Nature Magazine, June 6, 2019, <https://www.scientificamerican.com/article/trump-administration-halts-fetal-tissue-research-by-government-scientists/>13

K. Scanlon, “Exclusive: A Year Later, Planned Parenthood Filmmaker Reflects on Impact of Undercover Videos,” The Blaze, July 14, 2016, <https://www.theblaze.com/news/2016/07/14/exclusive-a-year-later-planned-parenthood-filmmaker-reflects-on-impact-of-undercover-videos>20

E. Scott, “GOP candidates condemn Planned Parenthood video,” CNN, July 15, 2015, <https://www.cnn.com/2015/07/14/politics/planned-parenthood-video-conservatives-condemn> ...14

J. Sekulow, “House Panel on Infant Lives,” American Center for Law and Justice, January 5, 2017, <https://aclj.org/pro-life/house-panel-on-infant-lives-defund-planned-parenthood>10

A. Shimmer, “Stop the Confirmation of Xavier Becerra, Biden’s Radically Pro-Action HHS Pick,” Students for Life, December 7, 2020, <https://www.studentsforlifeaction.org/stopbecerra/>.....21

D. Solomon, Governing: the Future of States and Localities, August 6, 2015, <https://www.governing.com/archive/tns-new-hampshire-planned-parenthood.html>.....16

S. Soltis, “Pro-life student hosts conference on ‘unethical and barbaric’ aborted fetal tissue research,” The College Fix, November 2, 2021, <https://www.thecollegefix.com/pro-life-student-hosts-conference-on-unethical-and-barbaric-aborted-fetal-tissue-research/>23

Students for Life,
<https://www.facebook.com/studentsforlife> (last visited July 23, 2023)22

Twibbon,
<https://twibbon.com/support/istandwithdavid>
(last visited July 23, 2023)22

J. Uffalussy, “As 6th Video is Released, Mounting Evidence that the Planned Parenthood Attack Is Coordinated – and Years in the Making,” Yahoo Health, August 12, 2015, <https://www.yahoo.com/lifestyle/with-release-of-6th-undercover-video-evidence-of-126520215477.html>9

U.S. House Committee on Energy and Commerce,
“Select Investigative Panel to Examine the
Pricing of Fetal Tissue,” April 19, 2016,
[https://energycommerce.house.gov/posts/select-
investigative-panel-examine-pricing-fetal
-tissue](https://energycommerce.house.gov/posts/select-investigative-panel-examine-pricing-fetal-tissue).....10

U.S. House Committee on Oversight and
Accountability, “Our Investigation,”
[https://oversight.house.gov/wp-
content/uploads/2015/09/Committee-Findings-
Planned-Parenthood-Investigation.pdf](https://oversight.house.gov/wp-content/uploads/2015/09/Committee-Findings-Planned-Parenthood-Investigation.pdf) (last
visited July 3, 2023)10

U.S. House of Representatives Committee
Repository, Hearing: Bioethics and Fetal
Tissue, March 2, 2016, [https://docs.house.
gov/Committee/Calendar/ByEvent.aspx?
EventID=104605](https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104605).....10

S. Zagorski, “Planned Parenthood’s Selling Babies is
So Bad Pro-Abortion George Pataki Says
Defund It,” Lifesite News, July 15, 2015,
[https://www.lifenews.com/2015/07/15/
planned-parenthoods-selling-aborted-babies-
is-so-bad-pro-abortion-george-pataki-says-
defund-it/](https://www.lifenews.com/2015/07/15/planned-parenthoods-selling-aborted-babies-is-so-bad-pro-abortion-george-pataki-says-defund-it/).....18

INTERESTS OF THE *AMICUS CURIAE*¹

Judicial Watch, Inc. (“Judicial Watch”) is a non-partisan, public interest organization headquartered in Washington, D.C. Founded in 1994, Judicial Watch seeks to promote accountability, transparency and integrity in government, and fidelity to the rule of law. Judicial Watch regularly files *amicus curiae* briefs and lawsuits related to these goals.

Amicus, as an issue-oriented educational 501(c)(3) non-profit organization, has a deep and vested interest in the ability to engage in free and fair speech. A large part of *Amicus*’ mission is to publish records and information it has obtained through open records laws. The ability to inform the public on matters of genuine and profound public interest is an essential aspect of free speech rights. The Ninth Circuit’s erroneous decision upholding the lower court’s permanent injunction amounts to unconstitutional viewpoint discrimination that must be corrected. In addition to the constitutional injuries Petitioners will continue to suffer, the public continues to suffer as well, by being purposefully prevented from learning the facts regarding an exceptionally important issue. Abortion affects not only personal choices, but national choices like

¹ Pursuant to U.S. Supreme Court Rule 37.2, *Amicus* informed the parties of its intention to file this brief on June 1, 2023, and June 9, 2023. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *Amicus Curiae* and its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

elections, federal funding, and agency regulations. It is absolutely essential that the public have the full story of what transpired on Petitioners' videos.

SUMMARY OF ARGUMENT

The Ninth Circuit's decision to uphold the district court is a blow to First Amendment rights that rises to the level of significant public importance. The Ninth Circuit's decision to rubberstamp viewpoint discrimination has caused substantial adverse consequences for the Petitioners in this case, including an especially unjust and onerous monetary award, the inability to use the videotapes as evidence in their criminal trial, and a chilling of their First Amendment rights. But the damage of the Ninth Circuit's decision goes far beyond the Petitioners. The decision has also caused substantial adverse consequences for the public in general. The freedom of speech logically incorporates the right to receive the speech as well. The right to speak is rendered meaningless without an audience free to listen.

By permanently silencing the Petitioners' speech, the general public is subsequently harmed by not being able to receive the information contained on the videotapes. The importance of the information on the videotapes being suppressed by the Ninth Circuit cannot be overstated. As *Amicus* will demonstrate, the videotapes that were released changed the national and state landscape in dramatic ways. The general public was largely unaware of the shocking underbelly of the abortion lobby which Petitioners exposed through the release of the videotapes.

Petitioners videos changed federal and state laws, spurred federal and state investigations, changed private business changes, and led to severe public backlash. By suppressing the further release of information, the Ninth Circuit effectively blocked access to information the public had a right to know. Absent this Court's intervention, the Petitioners and public are left with no avenue for legal relief for the adverse consequences they have suffered and will continue to suffer.

This Court's intervention is greatly needed.

ARGUMENT

A. The Petition Presents an Important Public Issue Which Warrants This Court's Attention.

This case presents the intersection of extraordinarily important issues of public concern: the First Amendment, the right to know, and human fetal tissue trafficking. As such, it is imperative that the Court intervene. *See e.g., Lau v. Nichols*, 414 U.S. 563, 565 (1974) (cert granted because of the public importance of the question presented); *see also United States v. Republic Steel Corp.*, 362 U.S. 482, 484 (1960); *Raley v. Ohio*, 360 U.S. 423, 435 (1959); *United States v. Union Pac. R.R. Co.*, 353 U.S. 112, 113 (1957); *Ex Parte Quirin*, 317 U.S. 1, 19 (1942); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 166 (1940); *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33, 42 (1940).

Historically, this Court has recognized that the First Amendment rights of the speaker and the press include the rights of the receiver and audience as well. “It is now well established that the Constitution protects the right to receive information and ideas. ‘This freedom [of speech and press] ... necessarily protects the right to receive ...’” *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (quoting *Martin v. Struthers*, 319 U.S. 141, 143 (1943)); see also *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972); *Virginia State Board of Pharmacy v. Virginia Citizen Consumer Council*, 425 U.S. 748, 756-57 (1976).

This recognition is based on the principle that to give the rights of speech and press any teeth, the right to receive must be included. In his concurring opinion in *Lamont v. Postmaster General*, 381 U.S. 301 (1965), Justice Brennan explained:

It is true that the First Amendment contains no specific guarantee of access to publications. However, the protection of the Bill of Rights goes beyond the specific guarantees to protect from congressional abridgment those equally fundamental personal rights necessary to make the express guarantees fully meaningful. I think the right to receive publications is such a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace

of ideas that had only sellers and no buyers.

Id. at 308 (Brennan, J., concurring, whom Goldberg and Harlan, JJ., joined) (internal citations omitted).

The Court confirmed Justice Brennan's "right to receive" principle in *Virginia State Board of Pharmacy v. Virginia Citizen Consumer Council*, 425 U.S. 748 (1976) when it held:

Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both. This is clear from the decided cases. In *Lamont v. Postmaster General*, 381 U.S. 301 (1965), the Court upheld the First Amendment rights of citizens to receive political publications sent from abroad. More recently, in *Kleindienst v. Mandel*, 408 U.S. 753, 762-763 (1972) we acknowledged that this Court has referred to a First Amendment right to 'receive information and ideas,' and that freedom of speech 'necessarily protects the right to receive.'

Id. at 756-57. After all, what good is the right to speak if the audience is prevented from receiving the information spoken?

Incorporating the right to receive information as an essential part of the rights to speech and press completes the purpose designed for protecting speech: debate and the free exchange of ideas, regardless of popularity. As this Court held in *Terminiello v. Chicago*, 337 U.S. 1 (1949):

The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in *De Jonge v. Oregon*, 299 U.S. 353, 365, it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes. Accordingly a function of free speech under our system of government is to invite dispute.

Id. at 4.

This right to receive is most significant when the information rises to the level of prominent public concern and public interest. “Speech by citizens on matters of public concern lies at the heart of the First Amendment, which ‘was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” *Lane v. Franks*, 573 U.S. 228, 325-35 (2014) (quoting *Roth v. United States*, 354 U. S. 476, 484 (1957)).

Petitioners' "speech" is comprised of the videotapes of Respondents discussing human fetal tissue, including how they harvest and sell it. The general topic of human fetal tissue harvesting has been a topic of great public interest and concern. The more specific topic of *trafficking* human fetal tissue has been a topic of even more significant public interest and concern.

Beginning in 2015, Petitioners began publicly releasing videotapes of undercover conversations they had with Respondents regarding the business of human fetal tissue. *See* Petition for Writ of Certiorari ("Petition") at 4-6. The videos were shocking and revealed publicly, for the first time, the grotesque nature of human fetal tissue trafficking. Petitioners' videos hit the mark with the general public and became an issue of intense public interest and concern: no longer would human fetal tissue be trafficked in the dark.

The impact of Petitioners' videos has been immense at all levels of American society. Federal and state legislatures and executive branches launched investigations, proposed and passed legislation, and issued executive orders in response to Petitioners' videos. Presidential campaigns included discussion and debate about Petitioners' videos and human fetal tissue trafficking. Private businesses cut business ties with Planned Parenthood and companies involved in human fetal tissue trafficking as identified on Petitioners' videos. Colleges and universities held conferences, hosted speakers and

panels, and dove into the legal, moral, and philosophical nature of the content of Petitioners' videos. The public's response included peaceful protests, petitions, boycotts, and perhaps most importantly, making their voices heard at the ballot boxes. Even the international community was impacted by Petitioners' videos. Some of the most prominent examples of the impact of Petitioners' videos are as follows:

1. *Federal Investigations*

- July 15, 2015: the U.S. House Judiciary Committee announced its intention to investigate allegations that Planned Parenthood doctors altered abortion procedures to increase the chances of obtaining usable fetal tissue. The hearing began on September 9, 2015.² The investigation concluded in December 2016 with the release of a detailed report calling for the Department of Justice to immediately investigate.³

² Kelly Coyle, "Republican Effort to Defund Planned Parenthood 2015," Ballotpedia, https://ballotpedia.org/Republican_effort_to_defund_Planned_Parenthood,_2015 (last visited July 3, 2023)

³ Committee on the Judiciary United States Senate, 114th Congress, Human Fetal Tissue Research, available at: <https://www.judiciary.senate.gov/imo/media/doc/2016-12-13%20MAJORITY%20REPORT%20-%20Human%20Fetal%20Tissue%20Research%20-%20Context%20and%20Controversy.pdf>

- July 22, 2015: a group of 49 bipartisan U.S. Senators wrote to the U.S. Department of Health and Human Services (“HHS”) after the release of Petitioners’ first video, calling on HHS to cooperate in any and all future investigations into Planned Parenthood’s role in fetal organ harvesting and requested that the Secretary confirm an immediate and thorough compliance review.⁴
- September 9, 2015: the U.S. House Committee on Oversight and Reform sent Petitioners and StemExpress requests for documents and materials regarding fetal tissue acquisition and sale. On September 29, 2015, the Committee held a hearing on the federal funding Planned Parenthood receives and how it spends its funds, including how it transfers funds from its 501(c)(3) arm into its 501(c)(4) arm for the purpose of lobbying. The Committee issued a memorandum in response which made the case that Planned Parenthood is “self-sustaining” and does not need federal funds.⁵

⁴ Jennifer Gerson Uffalussy, “As 6th Video is Released, Mounting Evidence that the Planned Parenthood Attack Is Coordinated – and Years in the Making,” Yahoo Health, August 12, 2015, <https://www.yahoo.com/lifestyle/with-release-of-6th-undercover-video-evidence-of-126520215477.html>

⁵ U.S. House Committee on Oversight and Accountability, “Our Investigation,” <https://oversight.house.gov/wp-content/uploads/2015/09/Committee-Findings-Planned-Parenthood-Investigation.pdf> (last visited July 3, 2023)

- March 2, 2016: the U.S. House Select Investigative Panel of the Committee on Energy and Commerce began hearings on “Bioethics and Fetal Tissue.”⁶
- April 20, 2016: the U.S. House Select Investigative Panel on Infant Lives began a hearing on “The Pricing of Fetal Tissue.”⁷ This investigation resulted in criminal and regulatory referrals as well as a scathing 471-page report revealing the practice of human tissue procurement businesses paying abortion performers per tissue specimen in violation of federal law.⁸
- December 13, 2016: the U.S. Senate Judiciary Committee sends criminal referrals to the U.S. Department of Justice (“DOJ”) and the Federal Bureau of Investigations (“FBI”). After a significant

⁶ U.S. House of Representatives Committee Repository, Hearing: Bioethics and Fetal Tissue, March 2, 2016, <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104605>

⁷ U.S. House Committee on Energy and Commerce, “Select Investigative Panel to Examine the Pricing of Fetal Tissue,” April 19, 2016, <https://energycommerce.house.gov/posts/select-investigative-panel-examine-pricing-fetal-tissue>

⁸ Jay Sekulow, “House Panel on Infant Lives,” American Center for Law and Justice, January 5, 2017, <https://aclj.org/pro-life/house-panel-on-infant-lives-defund-planned-parenthood>

delay, the DOJ confirms it is investigating the referrals and seeks documentation from the investigation.⁹

2. Federal Legislative Actions

- S 1861 – Defund Planned Parenthood (introduced 7/24/15)¹⁰
- S 1881 – Defund Planned Parenthood (and redirect funds to women’s healthcare) (introduced 7/28/15)¹¹
- S 3301 – Defund Planned Parenthood (introduced 7/29/15)¹²
- HR 3215 – End Trafficking of the Terminated Unborn Act of 2015 (introduced 7/27/15)¹³

⁹ Alex Dobuzinskis, “U.S. Department of Justice investigating fetal tissue transfers,” Reuters, December 8, 2017, <https://www.reuters.com/article/us-usa-plannedparenthood/u-s-department-of-justice-investigating-fetal-tissue-transfers-idUSKBN1E20HA?feedType=RSS&feedName=topNews>

¹⁰ Coyle, *supra* note 2.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

- S 1917 – prohibit funding to any clinic that accepts monetary compensation for tissue donations (introduced 9/8/15)¹⁴
- HR 3134 – Defund Planned Parenthood Act of 2015 (passed House 9/18/15)¹⁵
- S 3494 – Protecting Infants Born Alive Act (introduced 9/11/15)¹⁶
- HR 3504 – Born-Alive Abortion Survivors Protection Act (passed House 9/18/15)¹⁷
- HR 36 – Pain-Capable Unborn Child Protection Act (failed to proceed in Senate 9/22/15)¹⁸
- S Amdt 2669 to HJ Res. 61 – Senate tried to defund Planned Parenthood (failed 9/24/15)¹⁹
- HR 3495 – Women’s Public Health & Safety Act (permitting states to restrict Medicaid)

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

funds to abortion providing organizations)
(passed House 9/29/15)²⁰

3. *Federal Executive Responses*

- September 24, 2018: HHS ended its contract with Advanced Bioscience Resources (“ABR”) as a result of the investigations following Petitioners’ videos.²¹
- June 5, 2019: HHS ended federally funded fetal tissue research using human fetal tissue from elective abortions and placed more stringent restrictions on academic researchers and set up an ethics review board.²²

4. *Presidential Campaign Responses*

- GOP presidential candidates spoke about the videos and the issue of human fetal tissue harvesting on the 2016 campaign trail.

²⁰ *Ibid.*

²¹ Maggie Fox, “Trump Administration cancels FDA fetal tissue contract,” NBC News, September 28, 2015, <https://www.nbcnews.com/health/health-news/trump-administration-cancels-fda-fetal-tissue-contract-n913051>

²² Sarah Reardon, “Trump Administration Halts Fetal-Tissue Research by Government Scientists,” Nature Magazine, June 6, 2019, <https://www.scientificamerican.com/article/trump-administration-halts-fetal-tissue-research-by-government-scientists/>

Former Governor Jeb Bush, Governor Bobby Jindal, Dr. Ben Carson, Carly Fiorina, Former Governor Mike Huckabee, Governor Rick Perry, and Former Senator Rick Santorum all addressed the Petitioners' videos during the presidential primary campaign.²³

- Additionally, Senators Rand Paul and Ted Cruz, Former Governor Chris Christie, and the eventual GOP presidential nominee, Donald Trump, also addressed the videos and spoke out against the practice of trafficking human fetal body parts.²⁴
- Even the Democratic presidential nominee, former Secretary Hillary Clinton, called the videos “disturbing” and called for a national investigation into the practice of harvesting and selling human fetal tissue.²⁵

²³ Eugene Scott, “ GOP candidates condemn Planned Parenthood video,” CNN, July 15, 2015, <https://www.cnn.com/2015/07/14/politics/planned-parenthood-video-conservatives-condemn>

²⁴ Olivia Kittel, “Misinformers of the Year,” Media Matters for America, December 17, 2015, <https://www.mediamatters.org/planned-parenthood/misinformer-year-center-medical-progress>

²⁵ Liz Kreutz, “Hillary Clinton Calls Planned Parenthood Videos “Disturbing,” ABC News, July 29, 2015, <https://abcnews.go.com/Politics/hillary-clinton-calls-planned-parenthood-videos-disturbing/story?id=32757475>

5. *State Investigations*

- Georgia, Indiana, Massachusetts, Missouri, South Dakota, Tennessee, Texas, Arizona, Florida, Pennsylvania, and Ohio all launched investigations into state Planned Parenthood clinics in wake of videos.²⁶
- In addition to those states, Iowa, Kansas, Louisiana, and South Carolina launched similar investigations.²⁷
- Pennsylvania House Health Committee continued its human fetal trafficking investigations in 2021 to include the University of Pittsburgh’s use of human fetal tissue and concerns that its supplier is harvesting tissue from living human fetuses. Petitioner testified at the hearing and significant references to the videotapes and undercover reporting were made.²⁸

²⁶ Jessica Glenza, “Planned Parenthood ends fetal tissue payments: how did we get here?,” *The Guardian*, October 15, 2015, <https://www.theguardian.com/us-news/2015/oct/15/planned-parenthood-fetal-tissue-payments>

²⁷ Ken McIntyre, “3 States Defund and 13 States Investigate Planned Parenthood,” *The Daily Signal*, August 14, 2015, <https://www.dailysignal.com/2015/08/13/3-states-defund-and-13-states-investigate-planned-parenthood/>

²⁸ David Daleiden, “University of Pittsburgh Won’t Explain its Planned Parenthood Ties,” *Newsweek*, May 26, 2021, <https://www.newsweek.com/university-pittsburgh-wont-explain-its-planned-parenthood-ties-opinion-1594564>

6. *State Legislative and Executive Actions*

- Louisiana and Texas: defunded Planned Parenthood²⁹
- New Hampshire: Executive Council voted 3-2 to deny state funds to Planned Parenthood³⁰
- Utah: UT Department of Health ended contract with Planned Parenthood (stopped funds)³¹
- Arkansas: ended Medicaid funding for Planned Parenthood³²

²⁹ Associated Press, “Court: Texas, Louisiana can end Planned Parenthood funding,” November 23, 2020, <https://apnews.com/article/new-orleans-health-abortion-medicare-courts-d2d02c39dafacd820308f8f99aaf5fd6>

³⁰ Dave Solomon, *Governing: the Future of States and Localities*, August 6, 2015, <https://www.governing.com/archive/tns-new-hampshire-planned-parenthood.html>

³¹ Tiffany Frandsen, “Katie Galloway of Planned Parenthood Association of Utah,” *Salt Lake City Weekly*, September 16, 2015, <https://www.cityweekly.net/utah/karrie-galloway-of-planned-parenthood-association-of-utah/Content?oid=2986343>

³² Glenza, *supra* note 26.

- Kansas: Governor Brownback ordered the Kansas Department of Health to withhold all Medicaid funds from Planned Parenthood³³
- Alabama: Governor Bentley terminated state funding to Planned Parenthood³⁴
- Missouri: legislature voted to end contracts with Planned Parenthood affiliates in four states that permitted nurses and doctors to train at Planned Parenthood clinics³⁵
- Pennsylvania: state House Bill 118, the Unborn Child Dignity Act, passed with bipartisan support 118-83 (June 10, 2021)³⁶
- Attorneys General in 20 states asked the U.S. Supreme Court to release undercover videos

³³ Deb Hipp, “Kansas Gov. Ends State Planned Parenthood Funding,” Courthouse News Service, January 14, 2016, <https://www.courthousenews.com/kansas-gov-ends-state-planned-parenthood-funding/>

³⁴ Morgan Carlson, “Gov. Bentley cutting off state funding to Planned Parenthood,” WFS12 News, August 6, 2015, <https://www.wsfa.com/story/29728146/gov-bentley-cutting-off-state-funding-to-planned-parenthood/>

³⁵ *Ibid.*

³⁶ PA Family Institute, “Pa. bill would help provide compassionate options for women and families,” December 21, 2021, <https://pafamily.org/2021/12/13/pa-bill-would-help-provide-compassionate-options-for-women-and-families/>

exposing Planned Parenthood's criminal activity. See *David Daleiden, et al. v. National Abortion Federation, et al.*, Case No. 17-202. Arizona Attorney General Mark Brnovich authored the *amicus* brief which was signed by the attorneys general for the states of Alabama, Arkansas, Georgia, Indiana, Kansas, Louisiana, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Carolina, Texas, Utah, West Virginia, and Wisconsin.³⁷

- Former New York Governor George Pataki, after viewing videos, called the footage abhorrent and voiced support for a federal defunding of Planned Parenthood.³⁸

³⁷ Dr. Susan Berry, "20 States Ask Supreme Court to Release Videos Exposing Planned Parenthood," Breitbart, September 9, 2017, <https://www.breitbart.com/politics/2017/09/09/20-states-ask-supreme-court-release-videos-exposing-planned-parenthood/>

³⁸ Sarah Zagorski, "Planned Parenthood's Selling Babies is So Bad Pro-Abortion George Pataki Says Defund It," Lifesite News, July 15, 2015, <https://www.lifenews.com/2015/07/15/planned-parenthoods-selling-aborted-babies-is-so-bad-pro-abortion-george-pataki-says-defund-it/>

7. *Private Business Responses*

- Planned Parenthood announced it would “no longer” accept reimbursement for human fetal tissue costs.³⁹
- After admitting that they illegally sold human fetal tissue obtained from Planned Parenthood, both DV Biologics LLC and DaVinci Biosciences LLC were forced to shut down and pay a \$7.8 million settlement. The Orange County, CA district attorney credited Petitioners’ videos and undercover reporting for his successful prosecution.⁴⁰
- Stem Express, a human tissue procurement company, ended its contract with Planned Parenthood over concerns brought forth in Petitioners’ videos.⁴¹

³⁹ Stephanie Armour, “Planned Parenthood Stops Taking Reimbursements for Fetal Tissue,” *The Wall Street Journal*, October 13, 2015, <https://www.wsj.com/articles/planned-parenthood-stops-taking-reimbursements-for-fetal-tissue-1444744800>

⁴⁰ Daniel Langhorn, “Firms reach \$7.8 million settlement over allegations of selling fetal tissue,” December 12, 2017, <https://www.latimes.com/local/lanow/la-me-fetal-tissue-20171209-story.html>

⁴¹ Sarah Ferris, “Medical company cuts ties with Planned Parenthood,” *The Hill*, August 14, 2015, <https://thehill.com/policy/healthcare/251173-medical-company-cuts-ties-with-planned-parenthood/>

- On July 23, 2015, following the release of two of Petitioners' videos, the Heritage Foundation published a list of companies that financially support Planned Parenthood. Almost immediately, Coca-Cola, Ford Motor Company, and Xerox all contacted Planned Parenthood and requested that they be removed as corporate donors. They all made public statements distancing their companies and money from Planned Parenthood. Within 24-hours, the remaining companies also requested removal and publicly distanced themselves from Planned Parenthood.⁴²

8. *Public Reactions and Responses*

- In the first hour of release of the first video, it was viewed more than a million times⁴³

⁴² Bryan Fischer, "Major Companies Reject Planned Parenthood," American Family Association, July 24, 2015, <https://www.afa.net/the-stand/family/2015/07/major-companies-reject-planned-parenthood/>

⁴³ Kate Scanlon, "Exclusive: A Year Later, Planned Parenthood Filmmaker Reflects on Impact of Undercover Videos," The Blaze, July 14, 2016, <https://www.theblaze.com/news/2016/07/14/exclusive-a-year-later-planned-parenthood-filmmaker-reflects-on-impact-of-undercover-videos>

- Public boycotts of companies that financially support Planned Parenthood were launched⁴⁴
- Public petitions and opposition to nomination of Xavier Becerra as Secretary of Health and Human Services. Becerra took up the biased prosecution of Petitioners after Kamala Harris was elected as Vice President⁴⁵
- Peaceful protests outside Planned Parenthood clinics⁴⁶

⁴⁴ Leah Barkoukis , “These Companies Have Directly Supported Planned Parenthood, “ Townhall , July 27, 2015, <https://townhall.com/tipsheet/leahbarkoukis/2015/07/27/these-companies-have-directly-supported-planned-parenthood-n2031007>

⁴⁵ Autumn Shimmer, “Stop the Confirmation of Xavier Becerra, Biden’s Radically Pro-Action HHS Pick,” Students for Life, December 7, 2020, <https://www.studentsforlifeaction.org/stopbecerra/>; American Center For Law and Justice, “Stop Biden’s Pro-Abortion, Anti-Life HHS Nominee Becerra,” <https://aclj.org/pro-life/stop-bidens-pro-abortion-anti-life-hhs-nominee-becerra> (last visited July 3, 2023); David Daleiden, “Power Hungry Culture-Warrior Xavier Becerra Should Be Nowhere Near HHS,” National Review, February 24, 2021, <https://www.nationalreview.com/2021/02/power-hungry-culture-warrior-xavier-becerra-should-be-nowhere-near-hhs/>

⁴⁶ Paige Winfield Cunningham, “Abortion opponents to protest Planned Parenthood nationwide,” Washington Examiner, August 22, 2012, <https://www.washingtonexaminer.com/abortion-opponents-to-protest-planned-parenthood-nationwide>

- Petitions for Kamala Harris’s resignation following her unjust raid on Petitioners’ home.⁴⁷
- #istandwithdavid was created and promoted by a large number of pro-life organizations⁴⁸

9. *University Responses*

- University of Missouri-Columbia – cancelled contracts with Planned Parenthood⁴⁹
- Colorado State University – suspended some of its human tissue acquisitions⁵⁰

⁴⁷ Micaiah Bilger, “Pro-Life Groups Demand Kamala Harris Resign After Raiding David Daleiden’s Home, Stealing Videos,” Lifesite News, April 7, 2016, <https://www.lifenews.com/2016/04/07/pro-life-groups-demand-kamala-harris-resign-after-raiding-david-daleidens-home-stealing-videos/>

⁴⁸ See *e.g.*, Twibbon, https://twibbon.com/support/istandwithdavid_ (last visited July 23, 2023); Students for Life, <https://www.facebook.com/studentsforlife> (last visited July 23, 2023); 40 Days for Life, <https://www.facebook.com/40DaysforLifeTC/posts/793728024065736/> (last visited July 23, 2023).

⁴⁹ Missouri Right to Life, October 2015, <https://missourilife.org/wp-content/uploads/2020/02/october-2015.pdf>

⁵⁰ CBS News Colorado, “CSU Changing Policy Regarding Fetal Tissue,” July 30, 2015, <https://www.cbsnews.com/colorado/news/csu-caught-up-in-sale-of-fetal-tissue-controversy/>

- Student organized petition and conference on the “Unethical Research Conference” at the University of Pittsburgh was held November 8, 2021⁵¹

10. *International Response*

- Petitioners’ videos reached beyond the U.S. borders and invoked responses from the international community, including members of the European Parliament who called on the E.U. to defund Planned Parenthood. Alojza Peterle, a European Parliament member from Slovenia, stated that “It is unacceptable that an organization which appears to be breaching human rights, ethical standards, and laws is operating in the EU and is also being funded by EU taxpayers. I consider their activities as a serious offense over the first article of the Charter of Fundamental Rights of the European Union, which talks about the inviolability of human dignity.”⁵²

⁵¹ Sarah Soltis, “Pro-life student hosts conference on ‘unethical and barbaric’ aborted fetal tissue research,” The College Fix, November 2, 2021, <https://www.thecollegefix.com/pro-life-student-hosts-conference-on-unethical-and-barbaric-aborted-fetal-tissue-research/>

⁵² Live Action, “Members of European Parliament Call on EU to Defund Planned Parenthood Until Investigation into U.S. Video Scandal Are Carried Out in Europe,” October 16, 2015, <https://www.liveaction.org/members-of-european->

As evidenced by the events cited above, this is not simply a case of a federal circuit getting a case wrong resulting in isolated adverse effects. This is a case that rises to the level of substantial public concern and interest with profound and lasting adverse effects for the general public.

B. The Ninth Circuit’s Decision Has Caused Substantial Adverse Consequences.

The videos that Petitioners were able to publicly distribute have clearly had a significant impact on the country. *See supra* § A. Petitioners’ foes felt that impact in federal and state legislation, federal and state elections, federal and state funding, and private funding. It was imperative for the Respondents that, in order to protect their businesses, Petitioners’ unseen videos must be suppressed. Respondents accomplished this goal through elected officials and jurists who used their positions to censor Petitioners’ First Amendment rights. *See* Petition at 9-11; *see also* Alexandra DeSanctis, “Big Abortion v. David Daleiden”, Human Life Review, published May 21, 2012 (available at <https://eppc.org/publication/big-abortion-v-david-daleiden/>). And in censoring Petitioners’ speech, the public has been harmed. Without the complete picture of Respondents’ role in human fetal tissue trafficking, debate of federal and state legislation is missing context and facts. Without

parliament-call-on-eu-to-defund-planned-parenthood-until-
investigations-into-u-s-video-scandal-are-carried-out-in-europe/

the complete picture of Respondents' role in human fetal tissue trafficking, elections are conducted without a full accounting of candidates support or opposition of the harvesting and selling of human fetal tissue. Without a complete picture of Respondents' role in human fetal tissue trafficking, the public's right to know is utterly extinguished.

It is important to note that the two individuals most responsible for targeting Petitioners and censoring Petitioners' speech are now the current Vice President of the United States and the U.S. Secretary of Health and Human Services.⁵³ Censorship is a very politically profitable business when left unchecked.

The Court's intervention is needed to restore accountability in the Ninth Circuit, protect the First Amendment rights of the Petitioners to speak and disseminate their videos, and of the public to receive them.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that the Court grant the petition for writ of certiorari.

⁵³ See Alexandra DeSanctis, "Big Abortion v. David Daleiden", *Human Life Review*, published May 21, 2012 (available at <https://eppc.org/publication/big-abortion-v-david-daleiden/>)

Respectfully submitted,

Meredith L. Di Liberto
Counsel of Record
JUDICIAL WATCH, INC.
425 Third Street SW
Washington, DC 20024
(202) 646-5172
mdiliberto@judicialwatch.org

Counsel for Amicus Curiae

July 6, 2023