AMERICAN CENTER FOR LAW & JUSTICE

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The following documents were obtained through the Freedom of Information Act (FOIA) as part of the ACLJ's Government Accountability Project. You can learn more about the ACLJ's FOIA practice at ACLJ.org/FOIA

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American Center
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March 22, 2021

Department of Health and Human Services (HHS)
Freedom of Information Officer
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, D.C. 20201
Email: FOIARequest@hhs.gov
Phone: 202-690-7453
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RE: FOIA Request Regarding Records of and Concerning HHS's Funding of Aborted Fetal Tissue Research

To Whom It May Concern:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")[1] on behalf of itself and its members who demand accountability of our government and who respect the value of life. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this.

To summarize, this Request seeks records from the U.S. Department of Health and Human Services ("HHS") to determine the ethical, legal, and moral considerations the HHS has taken in undergoing its funding of continued research and creation of humanized mice with humanized, research using aborted fetal tissue, and in coming to its decision to contract with the University of Pittsburgh. The purpose of this request is to seek information that will then educate the American public about the HHS's considerations, practices, and procedures in its spending of U.S. tax-payer dollars.

[1] The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of the sanctity of human life and constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

[redacted]

Background

Pursuant to U.S. Department of Health and Human Services ("HHS") FOIA regulation 45 C.F.R. § 5.21(3), this Background "provide[s] details that will help . . . identify and find the records" requested to the extent known.

According to recent news reports: "University of Pittsburgh researchers obtained the bodies of aborted babies from a local hospital, grafting the babies' scalps to rodents for an immunology experiment."[2] Also according to reports, "The study was conducted within the bounds of state and federal regulations. The National Institute of Health funded the project, and the National Institute of Allergy and Infectious Diseases — led by Dr. Anthony Fauci — provided additional support."[3] The study is titled: Development of humanized mouse and rat models with full-thickness human skin and autologous immune cells.[4]

The HHS's funding of the University of Pittsburgh for "special studies/analysis-chemical/biological" which began on July 1, 2016, continues until today, with the last date to order of June 30, 2021.[5] This contract, according to the HHS, is for "Preclinical Pharmacokinetic and Pharmacology Evaluations of Agents Being Developed for Cancer Patients."[6] The Contract ID (Mod#) is: HHSN261201600022I.

Records Requested

For purposes of this Request, the term "record" means "any information" that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recording, or other material. The term "record" also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, *e.g.*, electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016)[7] (rejecting agency argument that emails on private email account were not under agency control, and holding, "If a

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[2] Benjamin Zeisloft, *U Pitt grafts aborted babies' scalps to rodents in disgusting experiment*, CAMPUS REFORM, January 1, 2021, (Feb. 19, 2021), https://www.campusreform.org/article?id=16610

[3] *Id.*

[4] Agarwal, Y., Beatty, C., Ho, S. et al. Development of humanized mouse and rat models with full-thickness human skin and autologous immune cells. Sci Rep 10, 14598 (2020). https://doi.org/10.1038/s41598-020-71548-z

[5] *List of Contract Actions Matching Your Criteria*, GENERAL SERVICES ADMINISTRATION, https://www.fpds.gov/ezsearch/fpdsportal?q=university+of+pittsburgh+DEPARTMENT_FULL_NAME%3A%22HEALTH+AND+HUMAN+SERVICES%2C+DEPARTMENT+OF%22+PIID%3A%22HHSN261201600022I%22&s=FPDSNG.COM&templateName=1.5.1&indexName=icdindex.

[6] *Id.*

[7] *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.").

For purposes of this Request, the terms "HHS official" or "HHS employee" include, but are not limited to, any person who is (1) employed by or on behalf of the HHS in any capacity; or (2) contracted for services by or on behalf of the HHS in any capacity.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is July 1, 2016 through the date of receipt of this Request.

Pursuant to FOIA, 5 U.S.C. § 552, ACLJ hereby requests that the HHS produce the following records:

1. **All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any HHS official or employee that concern or in any way discuss the ethical, legal, and/or moral considerations in contracting, granting or otherwise funding research involving human aborted babies' parts, or aborted fetal tissue**, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, HHS electronic mail or message accounts, non-HHS electronic mail or message accounts, personal electronic mail or message accounts, HHS servers, or non-HHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

2. **All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any HHS official or employee that concern or in any way discuss the ethical, legal, and/or moral considerations in contracting, granting or otherwise funding research involving humanized mice or any other animal**, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, HHS electronic mail or message accounts, non-HHS electronic mail or message accounts, personal electronic mail or message accounts, HHS servers, or non-HHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

3. **All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any HHS official or employee that concern or in any and FDA (including National Institute of Health or National Institute of Allergy and Infectious Diseases) funding or other type of support for research using human aborted babies' parts, or aborted fetal tissue**, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, HHS electronic

mail or message accounts, non-HHS electronic mail or message accounts, personal electronic mail or message accounts, HHS servers, or non-HHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

4. **All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any HHS official or employee that concern or in any involve HHS (including the National Institute of Health, the National Institute of Allergy and Infectious Diseases, or any other HHS component) funding or other type of support for research using human aborted babies' parts, or aborted fetal tissue**, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, HHS electronic mail or message accounts, non-HHS electronic mail or message accounts, personal electronic mail or message accounts, HHS servers, or non-HHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

5. **All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any HHS official or employee that concern or in any way discuss the required gestational age of the aborted fetal tissue used for research funded or otherwise supported by the HHS or any of its components**, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, HHS electronic mail or message accounts, non-HHS electronic mail or message accounts, personal electronic mail or message accounts, HHS servers, or non-HHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

5. **All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any HHS official or employee that concern or in any way discuss required procedures through which the University of Pittsburgh will obtain the aborted fetal tissue to ensure that the tissue is not damaged or spoiled in any way that makes it unsuitable for the research funded or otherwise supported by the HHS**, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, HHS electronic mail or message accounts, non-HHS electronic mail or message accounts, personal electronic mail or message accounts, HHS servers, or non-HHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

6. **All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any HHS official or employee that concern or in any way discuss whether clinics affiliated with Planned Parenthood will be a source of the aborted fetal tissue that is acquired for any research funded or otherwise supported by the HHS**, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, HHS electronic mail or message accounts, non-HHS electronic mail or message accounts, personal electronic mail or message accounts, HHS servers, or non-HHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

7. **All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any HHS official or employee, from November 1, 2020, to the date this request is processed, that concern or in any way discuss the Human Fetal Tissue Research Ethics Advisory Board, within the HHS's NIH**, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, HHS electronic mail or message accounts, non-HHS electronic mail or message accounts, personal electronic mail or message accounts, HHS servers, or non-HHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

CONCLUSION

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, your agency support all denials by reference to specific FOIA exemptions and provide any statutorily or judicially required explanatory information, including but not limited to a *Vaughn* Index.

Moreover, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Benjamin P. Sisney, Senior Litigation Counsel
John A. Monaghan, Senior Litigation Counsel

American Center for Law and Justice

[redacted]

I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Jordan Sekulow
Executive Director

Benjamin P. Sisney
Senior Litigation Counsel

John A Monaghan
Senior Litigation Counsel