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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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May 7, 2013

The Honorable Ken Cuccinelli
Attorney General of the Commonwealth of Virginia
900 East Main Street
Richmond, VA 23219

Dear Mr. Attorney General Cuccinelli:

By now you are surely aware of the trial of Kermit Gosnell, who is charged with the serial murder of infants, the murder of a female patient, and other felonies committed in the operation of his abortion clinic in Philadelphia. The grand jury described the clinic as "a baby charnel house."¹

The grand jury's findings shock the conscience. A routine practice at this clinic was to induce the delivery of infants—"breathing, squirming babies"²—who would then be killed by Gosnell or his unlicensed, untrained staff by "sticking scissors into the back of the baby's neck and cutting the spinal cord."³ The grand jury believes that hundreds of these murders occurred, and that hundreds more newborns died because they were abandoned, denied any care whatsoever. Gosnell is perhaps the first accused murderer to charge for his services by size: the report explains, "The bigger the baby, the more he charged."⁴

The Pennsylvania Department of Health, whose job it is to monitor facilities like Gosnell's, conducted sporadic site reviews between 1979 and 1993, citing various violations. But for "political reasons"⁵ the Department of Health decided to stop inspecting abortion clinics at all in 1993. Janice Staloski of the Pennsylvania Department of Health, for example, said that the policy decision to refrain from monitoring facilities was motivated by a desire not to be "putting a barrier up to women"⁶ seeking abortions.

¹ R. Seth Williams, District Attorney, Report of the Grand Jury, at 2, available at <http://www.phila.gov/districtattorney/pdfs/grandjurywomensmedical.pdf>.

² Id. at 4.

³ Ibid.

⁴ R. Seth Williams, District Attorney, Report of the Grand Jury, at 3, available at <http://www.phila.gov/districtattorney/pdfs/grandjurywomensmedical.pdf>.

⁵ Id. at 9.

⁶ Ibid.

The grand jury report found that, in Pennsylvania, numerous state and city regulatory agencies failed to adequately prevent violations of the law under a situation the report calls “regulatory collapse.”⁷ The grand jury in the Gosnell case reached a sobering conclusion about what brought on this “regulatory collapse”:

We think the reason no one acted is because the women in question were poor and of color, because the victims were infants without identities, and because the subject was the political football of abortion.⁸

We have all been shocked by the tragedy in Pennsylvania, and we know many states have strong laws to protect against these types of murders. We are simply writing to gather information about these laws and to see how the federal government might partner with states to help prevent similar atrocities.

We presume that each of you, upon learning of the failures highlighted by the Gosnell trial, have considered what your state governments are doing to ensure that similar crimes could not be perpetrated in your state. As federal officeholders, we too have an obligation to find out whether newborn infants—who are unquestionably persons under the law, regardless of one’s views on abortion—are being denied their most basic civil rights. We are seeking to find out if state and local governments are being stymied in their efforts to protect the civil rights of newborns and their mothers by legal or financial obstacles that are within the federal government’s power to address.

In order to assist the Committee with its oversight, please provide responses to the following questions by June 1:

1. In 2002 Congress enacted the Born-Alive Infants Protection Act, which provides that all federal protections for persons apply to every infant born alive. Do prosecutors in your state treat the deliberate killing of newborns, including those newborns who were delivered alive in the process of abortions, as a criminal offense? If so, have there been any prosecutions in your state for this crime? If the answer to the previous question is yes, please provide a log of cases, excluding any personally identifying information.
2. Has the legislature in your state enacted laws, in addition to general laws against homicide or requiring ordinary medical treatment, specifically to protect newborns delivered alive in the process of abortions? If so, how, if at all, have these laws changed prosecutorial practices?
3. The grand jury expressed concern about Pennsylvania law’s applying a statute of limitations to infanticide by neglect that it does not apply to murder. Does your state have different statutes of limitations for culpability in the death of an infant and culpability in the death of human beings in later stages of development? If so, what is the understood rationale for that difference?

⁷ R. Seth Williams, District Attorney, Report of the Grand Jury, at 8, available at <http://www.phila.gov/districtattorney/pdfs/grandjurywomensmedical.pdf>.

⁸ Id. at 13.

4. Have you or your predecessors prosecuted any criminal cases in which a woman has died or suffered serious complications as a result of an abortion? If so, please provide a log of such cases, excluding any personally identifying information.
5. This Gosnell case has also raised concerns about the effectiveness of state laws that limit, or purport to limit, abortions late in pregnancy. If your state has such a limit, have abortions performed after the statutory limit been prosecuted in your state? If so, please provide a log of such cases, excluding any personally identifying information. If not, are there legal considerations that have prevented such prosecutions from proceeding?

In addition to the information requested above, please provide copies of any official written procedures or guidance that relate to the gathering of information on, or the prosecution of, newborn homicides.

We ask that you provide the requested information as soon as possible, but no later than 5:00 p.m. on June 1, 2013. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2138 of the Rayburn House Office Building and the Minority Staff in Room B-351 of the Rayburn House Office Building.

If you have any questions about this request, please contact John Coleman of the Committee Staff at 202-225-1518.

Sincerely,



Bob Goodlatte
Chairman



Trent Franks
Chairman, Subcommittee on
the Constitution and Civil Justice