



STATE OF INDIANA

OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 WEST WASHINGTON STREET 1 INDIANAPOLIS, IN 46204-2770
www.AttorneyGeneral.IN.gov

CURTIS T. HILL, JR.
INDIANA ATTORNEY GENERAL

TELEPHONE: 317.232.6201
FAX: 317.232.7979

April 9, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Vice President Michael R. Pence
The White House
Office of the Vice President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Secretary Alex M. Azar II
U.S. Department of Health & Human Services
200 Independence Ave., S.W.
Washington, DC 20201

Director Francis S. Collins, M.D., Ph.D.
National Institutes of Health
9000 Rockville Pike
Bethesda, MD 20892

Dear President Trump, Vice President Pence, Secretary Azar, and Director Collins:

The States of Indiana, Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Kentucky, Louisiana, Missouri, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia write in support of the current ban on federal funding for fetal tissue research that took effect in June 2019.¹ California and several other States (the “California letter”) recently entreated this administration to end what they call the “Fetal Tissue Ban” in order to facilitate research on COVID-19. We urge you to deny that request.

¹ Statement from the Department of Health and Human Services (June 5, 2019), available at <https://www.hhs.gov/about/news/2019/06/05/statement-from-the-department-of-health-and-human-services.html>.

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The California letter states, “The present moment is not a time for politics.” But exploiting a national emergency to forward their own political goals is exactly what California and its allied States seek to do. In enacting the ban on federal funding for fetal tissue research, the Trump Administration made a policy decision that scientific research on the bodies of unborn children was not consistent with its priority of “promoting the dignity of human life from conception to natural death.”² The California letter suggests that the Administration’s philosophical commitment to acting consistent with human dignity may be thrust aside for the convenience of the moment. The Administration, however, imposed the ban precisely to prevent resort to such a purely utilitarian ethic.

Fetal tissue research has serious ethical and moral ramifications. Fetal tissue is unquestionably human tissue. *See Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780 (2019) (holding that the State’s legitimate interest in the proper disposal of human remains is rationally related to law regulating the disposal of fetal remains). The foundation of ethical research on human subjects is respect for self-determination, even among those who are incapable of self-determination. U.S. National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *The Belmont Report: Ethical principles and guidelines for the protection of human subjects of research* 4 (1979).³

Moreover, respect for those who have not yet attained the capacity of self-determination “may require protecting them as they mature.” *Id.* For this reason, parents do not have the authority to choose a course of treatment that is at odds with their children’s health. Aviva L. Katz & Sally A. Webb, *Informed Consent in Decision-Making in Pediatric Practice*, 138 *Pediatrics* e1, e5–e6 (2016).⁴ It follows that in the case of elective abortions, the child cannot consent, and the mother, who is choosing voluntarily to end the child’s life, may not consent on the child’s behalf because she does not share the interests of the child.

The California letter argues that the Administration should overlook these ethical concerns in the face of the “unprecedented crisis” of the COVID-19 pandemic. Research on human tissue from a non-consenting person is unethical regardless of any potential scientific advances that such research might facilitate. Ending some human lives for the purpose of saving other human lives would turn this nation’s commitment to the inalienable right to life on its head. Charlotte Bronte wrote, “Laws

² *Id.*

³ Available at https://www.hhs.gov/ohrp/sites/default/files/the-belmont-report-508c_FINAL.pdf.

⁴ Available at <https://pediatrics.aappublications.org/content/pediatrics/138/2/e20161485.full.pdf>.

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and principles are not for the times when there is no temptation: they are for such moments as this, when body and soul rise in mutiny against their rigour; stringent are they; inviolate they shall be. If at my individual convenience I might break them, what would be their worth?”

Regardless, lifting the ban on federally funded fetal tissue research offers no promise of assistance in the response to COVID-19. The California letter identifies no current medical treatments that required for their discovery or development research using fetal tissues from induced abortions. The letter claims that fetal tissue is necessary to “accelerate vaccine development” for COVID-19, but fresh fetal tissue from recent abortions—as distinguished from cell lines derived from abortions occurring long ago—has not been used to create a single vaccine. Dr. Tara Sander Lee, a biochemist with twenty years’ experience in academic and clinical medicine, has told Congress that while fetal cell lines from the 1960s and 1970s were used to develop some vaccines, “[n]one of the 75 vaccines available in the U.S. are produced using fresh fetal tissue.”⁵ The Fetal Tissue Ban does not preclude federal funding for research on COVID-19 using those cell lines.

The Fetal Tissue Ban encourages scientists to develop new treatments ethically. Indeed, Dr. David A. Prentice, a cell and developmental biologist with forty years’ experience as a professor and researcher, testified to Congress that the new vaccines for shingles, zika, and ebola were all developed using neither fresh fetal tissue nor historical fetal cell lines.⁶ Ethical alternatives to fetal tissue also exist for purposes of biological research. For instance, according to Dr. Prentice, pluripotent stem cells, which may be produced from adult human tissue, can provide “an unlimited source of identical cells for experimental replicates,” and have “the ability to form virtually any cell type for study and modeling, or potential clinical application.”⁷ And humanized mice (mice with a human immune system) can be created using stem cells

⁵ Tara Sander Lee, Ph.D., Written testimony “In Support of Ethical Alternatives to Aborted Fetal Tissue Research,” Invited Scientific Testimony. Joint Hearing, Subcommittee on Healthcare, Benefits, and Administrative Rules and Subcommittee on Government Operations, House Oversight & Government Reform Committee, U.S. House of Representatives, December 13, 2018, *available at* <https://lozierinstitute.org/written-testimony-of-tara-sander-lee-ph-d-in-support-of-ethical-alternatives-to-aborted-fetal-tissue-research/>.

⁶ David A. Prentice, “Exploring Alternatives to Fetal Tissue Research” Invited Scientific Testimony. Joint Hearing, Subcommittee on Healthcare, Benefits, and Administrative Rules and Subcommittee on Government Operations, House Oversight & Government Reform Committee, U.S. House of Representatives, December 13, 2018, *available at* <https://s27589.pcdn.co/wp-content/uploads/2019/01/Prentice-Testimony-HCBAR-GO-Fetal-Tissue-12.13.18.pdf>.

⁷ *Id.*

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from the umbilical cord or from adult stem cells and immune cells.⁸ These mice “can be used for the study of immunity and immune development, vaccines, immunotherapies, and cancer.”⁹

Indiana, Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Kentucky, Louisiana, Missouri, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia urge the Trump administration to stand by its priority of “promoting the dignity of human life from conception to natural death” even in this global health crisis. In order to make advances in the ethical treatment of human remains, this nation must reject the false notion that scientists cannot achieve the laudable goal of creating vaccines and treatment for COVID-19 without using unethical means.

Very truly yours,



CURTIS T. HILL, JR.
Indiana Attorney General



STEVE MARSHALL
Alabama Attorney General



KEVIN CLARKSON
Attorney General of Alaska

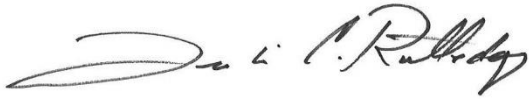


MARK BRNOVICH
Arizona Attorney General

⁸ *Id.*

⁹ *Id.*

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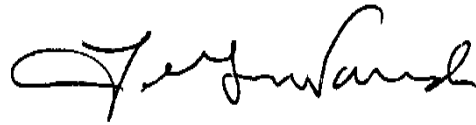
LESLIE RUTLEDGE
Arkansas Attorney General



ASHLEY MOODY
Florida Attorney General



CHRISTOPHER M. CARR
Georgia Attorney General



LAWRENCE WASDEN
Idaho Attorney General



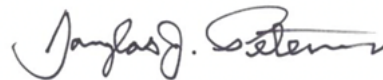
DANIEL CAMERON
Kentucky Attorney General



JEFFREY MARTIN LANDRY
Louisiana Attorney General



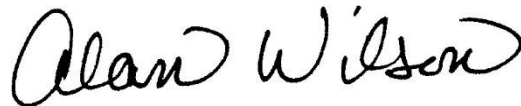
ERIC S. SCHMITT
Missouri Attorney General



DOUG PETERSON
Nebraska Attorney General



MIKE HUNTER
Oklahoma Attorney General

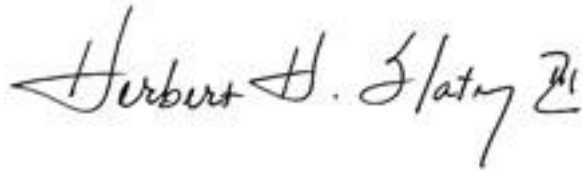


ALAN WILSON
South Carolina Attorney General

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JASON RAVNSBORG
South Dakota Attorney General



HERBERT H. SLATERY III
Tennessee Attorney General



KEN PAXTON
Texas Attorney General



SEAN REYES
Utah Attorney General



PATRICK MORRISEY
West Virginia Attorney General