



Written by [Raven Clabough](#) on January 25, 2016

CMP's Daleiden Seeks to Submit Planned Parenthood Recordings in Supreme Court Case

Planned Parenthood has fought to keep hidden damning evidence of the organization's involvement in a fetal organ harvesting scheme revealed through a series of undercover videos released by David Daleiden and the Center for Medical Progress. But on Friday, Daleiden filed a motion to submit some of the recordings captured in the videos as evidence in *Whole Woman's Health v. Cole*, a case at the Supreme Court that will examine the constitutionality of a Texas state law involving abortion clinics.



On March 2, the Supreme Court will begin hearing arguments in *Whole Woman's Health v. Cole*, which looks at a 2013 Texas law that plaintiffs claim stands in the way of a woman's right to abortion because it places specific requirements on abortion clinics. The requirements set clinic standards similar to those of surgical centers, and require that doctors at the clinics must have admitting privileges at hospitals no more than 30 miles away. Those opposed to the law say it is intended to limit abortions, while advocates of the law argue it protects women's health.

In 1992 the Supreme Court ruled in *Planned Parenthood of Southeastern Pennsylvania v. Casey* that states cannot place "undue burdens," defined as those that have "the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion." That ruling is apparently not going to be challenged in *Whole Woman's Health v. Casey*. Nor is the "right" to an abortion being challenged. Instead, as the Supreme Court's blog (SCOTUSblog.com) explains, the court will consider:

(1) Whether, when applying the "undue burden" standard of *Planned Parenthood v. Casey*, a court errs by refusing to consider whether and to what extent laws that restrict abortion for the stated purpose of promoting health actually serve the government's interest in promoting health; and (2) whether the Fifth Circuit erred in concluding that this standard permits Texas to enforce, in nearly all circumstances, laws that would cause a significant reduction in the availability of abortion services while failing to advance the State's interest in promoting health — or any other valid interest.

The *Washington Examiner* elaborates on the implications of the Supreme Court's ruling in this case:

The Texas regulations have been mirrored in conservative-led states around the country, prompting a wave of lawsuits by abortion clinics and groups in favor of abortion rights.... The Supreme Court's ruling on the Texas law is likely to set major legal precedent for abortion law going forward.

The Thomas More Society, a Christian legal group who submitted Friday's motion on Daleidan's behalf, states that Daleiden has evidence that supports Texas' position that he would like to include in an amicus brief for the Supreme Court in the case.



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"Piecing together the information learned from various sources, including, for example, the staffing and number of abortions performed daily at one Texas abortion facility defendants visited, they can speak directly to amici's contention that the demand for abortion services in Texas cannot be met if H.B. 2 takes full effect," the brief reads.

The motion states that Daleiden and CMP are "uniquely qualified to file an amicus brief in *Whole Woman's Health* given the depth of their knowledge regarding the abortion industry gained as a result of the multi-year investigative journalism venture, the Human Capital Project."

The Human Capital Project is the 30-month-long investigative study by the Center for Medical Progress that documented Planned Parenthood's fetal organ harvesting scheme. The study resulted in the release of nearly one dozen undercover videos. CMP's released tapes include secretly recorded comments from executives of Planned Parenthood and StemExpress, undercover footage from clinics (including footage of fetal tissue being handled by workers), footage of fetal tissue from aborted pregnancies, and on-camera interviews with Holly O'Donnell, a former StemExpress procurement technician. The damning videos featured Planned Parenthood officials admitting to altering abortion procedures to procure fetal tissue, as well as selling fetal tissue for profit. Another video also revealed that StemExpress did not always obtain consent from mothers to use their fetal tissue.

Daleiden contends that in the process of investigating Planned Parenthood's fetal tissue practices, he uncovered evidence that abortion clinics are in fact able to comply with the requirements in the 2013 Texas law, contrary to assertions by the clinics that those requirements are so strict that they infringe upon a woman's right to obtain an abortion.

Daleiden states that he obtained this evidence while in attendance at the 2015 National Abortion Federation conferences, in which he was disguised as a human-tissue buyer. According to the Washington Examiner, at least two presenters at the conferences provided Daleiden with information that directly contradicts claims that the clinics are incapable of complying with the regulations. The National Abortion Federation has filed a lawsuit against Daleiden for infiltrating the conference from which he obtained this information while disguising his identity.

However, Daleiden cannot include this information in his brief without first receiving permission from Judge William Orrick, III, who issued a restraining order on CMP's videos last year following a request by the National Abortion Federation. Without Judge Orrick's permission, he would be held in contempt of court.

Judge Orrick made an exception to the restraining order in October, however, when U.S. Representative Jason Chaffetz, chairman of the House Oversight and Government Reform Committee, issued a subpoena for the video footage. "I issued the [temporary restraining order] because defendants, after entering into nondisclosure agreements with NAF under false pretenses, clearly breached the agreements not to disclose information learned at NAF's annual meetings," Judge Orrick said in October.

Judge Orrick added that he remained "concerned about the threat of irreparable injury to the privacy rights of NAF's members," a point addressed in Friday's motion. "Lifting the TRO to allow these limited materials to be included in and discussed in the CMP Amicus Brief will not endanger or violate the privacy of any NAF members or attendees," the motion reads.

"First, Defendants are asking only to modify the TRO as regards to two portions of audio recordings," the motion continues. "This request is as narrowly tailored as possible to allow Defendants to make the points they need to make while still protecting the anonymity of all non-presenters at the conferences whose faces might be captured in the videos."



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“Second, the presenters whose voices are on the two recordings are publicly identifiable as supporters of abortion rights have previously been publicly identified as being associated with Planned Parenthood and/or abortion advocacy.”



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