

United States Senate

February 8, 2024

Mayor Muriel Bowser
Executive Office of the Mayor
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Francisco J. Diaz, MD, FACP
Chief Medical Examiner
D.C. Office of the Medical Examiner
401 E St SW
Washington, D.C. 20024

Chief Pamela A. Smith
Metropolitan Police Department
Henry J. Daly Building
300 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Mayor Bowser, Chief Examiner Diaz, and Chief Smith,

I write today in my capacity as Ranking Member of the Subcommittee on the Constitution, United States Senate Committee on the Judiciary for the second and final time to provide notice of your obligations to preserve evidence for future Congressional oversight hearings. As you are all aware, the United States Congress holds unique jurisdiction and constitutional authority to oversee the District of Columbia under Article 1, Section 8, Clause 17 of the United States Constitution. This oversight role becomes especially important, however, when the executive leadership of Washington, D.C. demonstrates a candid willingness to obstruct justice by refusing to investigate, much less respond to, basic inquiries about the manners and means of fetal deaths, deaths that could very well have occurred through procedures conducted in violation of federal law.

Recent news indicates that the Department of Justice reportedly advised the D.C. Chief Medical Examiner to dispose of the remains of five aborted preemie-sized babies, as disclosed by attorney Martin Cannon, who is representing pro-life activists currently being prosecuted by the Department of Justice. As he explains, on a February 5, 2024: “[he] got a call from the medical examiner’s office indicating that the Department of Justice... advised [the medical examiner’s office] that there is no reason to keep those babies anymore.”¹ In reaction to this directive, Cannon

¹ Mary Margaret Olohan, *EXCLUSIVE: DOJ Advised DC Medical Examiner to Dispose of Aborted Baby Bodies, Lawyer Says*, THE DAILY SIGNAL (Feb. 5, 2024),

reported that: “The medical examiner’s office... tells [him] that if [they] don’t have an order to the contrary, by the end of this week ... [then] they will dispose of the babies.”² Cannon went on to express concern over the medical examiner’s decision to instantly heed the Department’s directive to dispose of the evidence, questioning why the examiner’s office would take “such stark marching orders from the DOJ.”³

This news comes almost two years after Lauren Handy and her colleague Terrisa Bukovinac made a chilling discovery outside a Foggy Bottom-based abortion facility known as Washington Surgi-Clinic, which is operated by Dr. Cesare Santangelo, an abortionist who is known for conducting late-term abortions. There, these two pro-life activists encountered the mutilated bodies of five preemie-sized aborted babies, babies that, given their size and maturity, may very well have been aborted in violation of federal law. Accordingly, this evidence warrants an investigation into the circumstances surrounding the deaths of the unusually-mature fetal remains, particularly regarding whether ‘the Five’ were born alive and left to die, subjected to partial-birth abortion procedures, or were otherwise murdered following botched abortion attempts.

As I made your offices aware on April 8, 2022, under the Partial-Birth Abortion Ban Act of 2003,⁴ a partial-birth abortion occurs when a physician partially delivers a living child for the purpose of performing an overt act that intentionally takes the life of the child.⁵ The U.S. Supreme Court upheld the federal ban on partial-birth abortions in *Gonzales v. Carhart*.⁶ Additionally, Congress passed the Born Alive Infants Protection Act of 2002 to provide equal protections for children who are born alive during an abortion.⁷

As I previously explained to your offices, it is a grave injustice both that these children may very well have been aborted in violation of federal law, and that the D.C. government—that Congress oversees—remains unwilling to investigate the circumstances. Despite the grotesque evidence of potentially illegal abortion procedures, the District of Columbia and Department of Justice authorities have consistently stonewalled inquiries into the deaths of the five aborted babies, with the D.C. police claiming the case remains “open” and “under investigation” as recently as August 2023, despite no meaningful progress or updates in over sixteen months.⁸ The Mayor’s Office has

<https://www.dailysignal.com/2024/02/05/exclusive-doj-advised-dc-medical-examiner-to-dispose-of-aborted-baby-bodies-lawyer-says/>.

² *Id.*

³ *Id.*

⁴ 18 U.S.C. § 1531.

⁵ For the full text of my previous April 8, 2022 letter, see:

https://www.cruz.senate.gov/imo/media/doc/letter_to_bowser_and_mpd_re_evidence_preservation_demand_congressional_oversight.pdf

⁶ 550 U.S. 124, 132 (2007)

⁷ 1 U.S.C. § 8

⁸ Michelle Boorstein, Peter Hermann, *D.C. Medical Examiner has no plans to autopsy fetuses removed from antiabortion activist’s home, officials say*, WASH. POST (Apr. 1, 2022),

<https://www.washingtonpost.com/religion/2022/04/01/lauren-handy-dc-abortion-fetuses/>.

similarly evaded questions about the matter, redirecting queries and refusing to comment, while the Office of the Chief Medical Examiner has not disclosed whether any autopsies have been conducted on the babies' bodies.⁹ Simultaneously, while efforts to seek justice for these innocent lives have been thwarted at almost every conceivable turn, Mayor Bowser has aggressively characterized the charges facing peaceful pro-life activists like Lauren Handy, accusing her of "tampering with fetal remains," "blockad[ing]" the entrance to a D.C. abortion clinic in October 2020, and committing "serious violations of federal law."¹⁰

Even more disturbing, however, is the recent news that the Medical Examiner's Office has expressed concrete plans to destroy all evidence before justice can be achieved. To do so, would deny these five innocent victims justice and assume the cause and nature of these children's deaths without conducting any investigation, without performing any autopsies, and without even affording these children a proper, respectful burial.

In April 2022, I joined letters demanding that you, the Department of Justice, and the Federal Bureau of Investigation ("FBI") open investigations to determine whether these children were aborted in violation of federal law, specifically the Partial-Birth Abortion Ban Act of 2003. The letter led by Senator Mike Lee (R-UT) sent on April 8, 2022 to the Department of Justice and the FBI reiterated similar requests to ensure preservation of each of the five bodies as evidence for future investigations.

I write separately today to speak specifically to some of the oversight actions that justify this second and final preservation demand. Specifically, and while I understand that the DOJ is pressuring the D.C. Medical Examiner to dispose of the bodies, I am demanding in the strongest possible terms that you do not do so. Furthermore, I ask that Mayor Bowser and Police Chief Smith direct the Chief Medical Examiner Diaz to conduct an autopsy of each of these five children's bodies.

It is highly likely that after the upcoming election in November 2024, control of the Senate will shift to the Republican Party. At that time, when I am Chairman of the Subcommittee on the Constitution, I will schedule hearings on likely violations, like those at issue with these five children, such as the Partial-Birth Abortion Ban Act of 2003 and the Born Alive Infants Protection Act. These hearings will also no doubt scrutinize the behavior of those who obstructed Senate investigatory efforts by willfully destroying evidence despite not one, but two, demands to preserve evidence. To be clear, the remains of these five children are critical evidence in the Congressional oversight that the Subcommittee on the Constitution will conduct in the imminent future. Should the D.C. Medical Examiner's office decide not to conduct timely autopsies, or preserve the bodies of these babies for outside examination, the Senate Judiciary Committee will

⁹ Olohan, *supra* note 1.

¹⁰ *Id.*

have no choice but to expand this issue into a full hearing featuring the Department of Justice and the Office of the D.C. Medical Examiner as witnesses before the American public.¹¹

Please confirm proof of your compliance with these evidence preservation demands no later than February 9, 2024.

Sincerely,



Ted Cruz
Ranking Member, Subcommittee on the Constitution
U.S. Senate Committee on the Judiciary

CC: Rodney Adams, General Counsel, Office of the Chief Medical Examiner for the District of Columbia

Enclosure

¹¹ Nothing in this evidence preservation directive should be construed to prohibit an autopsy or investigative actions to determine whether the five children were aborted or killed in violation of federal law.