KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2015

Speaker Joe Straus, III
Texas House of Representatives
Post Office Box 2910
Austin, TX 78768

Re: Interim Charges on Religious Liberties

Dear Speaker Straus:

As you know, many Texans are frustrated and fearful that the fundamental values and freedoms that define Texas and America are under assault. The essence of liberty is rooted in the dignity of the human person. A society which proclaims to be just must recognize that every human life, including unborn babies, has the right to live. Moreover, human dignity requires that a person be free to exercise his or her religious faith and that no government will discriminate or oppress a person based on the person's thoughts or beliefs.

As you craft interim charges for examination by Senate Committees during the time between this past Session and the 2017 Session of the Legislature, I recommend that you consider investigating some of the ways Texas can: (1) further protect the life and dignity of unborn babies, and (2) further protect our religious liberties.

Protecting the Life and Dignity of Unborn Babies

In mid-July of this year, a series of undercover videos revealing interviews with national and/or California-based Planned Parenthood officials suggested there may be improper or illegal trafficking in body parts, organs, any other fetal tissue (collectively "body parts") of aborted babies by Planned Parenthood. Similarly, the Office of the Governor and the Office of the Attorney General (OAG) became aware that there was a recording of the Houston Planned Parenthood facility and its staff discussing potential sales of fetal tissue. Consequently, both the OAG and the Texas Department of State Health Services (DSHS) initiated an investigation as to whether abortion providers in Texas, including Planned Parenthood, engaged in the sale of aborted babies, their body parts, and, if so, whether any laws were violated.

The OAG investigation has continued methodically and is ongoing. It has thus far included: researching and analyzing applicable law; following up with persons with varying levels of knowledge; reviewing potential evidence; making contact with

and gathering information from every Texas abortion provider, every Texas medical school and bio-medical research university, and all but one aborted baby body part and fetal tissue intermediary or broker identified as having done business in Texas or with Texas based entities; and also working with local district attorneys investigating possible criminal violations. StemExpress, an intermediary at the center of the controversy surrounding the Planned Parenthood videos, is the only intermediary that has failed to respond to the OAG's requests to examine. As a direct consequence of the investigation, the OAG, working with DSHS, has identified potential areas where the laws to protect the life and dignity of unborn babies can be enhanced.

Areas you may want to examine include, among other possibilities, whether Texas should:

- Outlaw partial birth abortions and dismemberment procedures.

- Assess whether prudence and medical advances suggest a prohibition on abortions lower than the current 20-week limit (as in much of Europe and Russia).

- Consider a comprehensive statute prohibiting the use of Texas taxpayer funds to pay for abortions.

- More effectively regulate the business of the sale, donation, and use of aborted babies and their body parts.
    - Prohibit the purchase of aborted babies and their body parts from a patient.
    - Require adequate and informed consent by a person donating aborted babies and their body parts.
    - Place stricter reporting and transparency requirements on abortion facilities, tissue brokers, and purchasers of aborted babies and their body parts.
    - Prohibit state or local government entities from acquiring aborted babies or their body parts.

- More effectively regulate abortion providers regarding their treatment of aborted babies and their body parts, both before and after the abortion.
    - Require the use of an anesthetic abortifacient.
    - Require each aborted baby to be treated with the same dignity as any other deceased person in terms of disposition of their remains.
    - Heighten the reporting requirements, including the position of the baby and specific steps taken by the doctor who performs the abortion.

- Require abortion providers to report to law enforcement as potential sexual assault any pregnancy of a minor 16 years old or younger.

- Increase the administrative regulatory authority powers of applicable agencies, including:
  - Allowing the Department of State Health Services to impose increased penalties, including closure orders, for violations and to conduct at least annual inspections.
  - Granting the Office of the Attorney General investigative enforcement authority for civil violations as well as joint criminal enforcement authority with local prosecutors.

Protecting Religious Liberties

Religious liberties form the first freedom in the Bill of Rights. The First Amendment prevents government from infringing on the free exercise of religion or establishing a religion. Unfortunately, certain courts and legislative bodies have made laws and rulings that undermine Americans' religious. These attacks on religious liberty harm not only those of religious faith, but are a threat to the freedom of conscience for all Americans. But the Texas Legislature can take a firm stand to protect the religious liberties of all Texans. Under your leadership, the Texas Legislature did just that in 2015 in specifying in Senate Bill 2065 that (1) ministers should not be liable for refusing to solemnize a wedding that would violate their religious beliefs and (2) religious organizations should not be liable for refusing to host a wedding that violates its religious beliefs.[1] That legislation was a significant step in the effort to clarify the specific rights of religious liberty and freedoms of conscience that are protected by the broadly worded provisions of the United States and Texas constitutions and Religious Freedom Restoration Acts. Based on that model, the Legislature now has the opportunity to afford much more clarity and prevent needless litigation.

For example, the Texas Legislature may want to consider, among other things, the additional specificity of clarifying that:

- Religious organizations should not be forced to compromise their religious beliefs when making staffing and housing decisions.

- Faith-based adoption and foster care agencies should be free from discrimination based on their religious beliefs, as has occurred in other jurisdictions.

---

[1] Senate Bill 2065, 84th R.S., 2015, *at* http://www.capitol.state.tx.us/tlodocs/84R/billtext/pdf/SB02065F.pdf#navpanes=0.

- The accreditation of religious schools should not be revoked due to the school's sincerely-held religious beliefs.

- Tax assessors should not revoke religious tax accommodations based on religious beliefs.

- Religious beliefs when providing counseling should be protected.

- Small businesses and closely held corporations should not be required to provide goods or services for weddings that violate their sincerely held religious beliefs.

- Judges and other officiants should not be forced to perform weddings that violate their sincerely held religious beliefs.

- The State does not, in the process of complying with the United States Supreme Court's ruling in *Obergefell v. Hodges*, needlessly trample the religious liberties of State and local government employees.

- Public school, college or university students' retain their constitutional freedom to speak their religious beliefs, to associate with others of similar religious beliefs, and to not be compelled to participate in religious practices contrary to their religious beliefs.

- Discrimination laws and ordinances should be uniform across the State.

Thank you for all that you have done and continue to do to ensure the first freedoms of Texans are adequately protected.

Very truly yours,

Ken Paxton

KEN PAXTON
Attorney General of Texas