

REVISITING THE IMPLICATIONS OF THE  
FACE ACT: PART II

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HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION AND  
LIMITED GOVERNMENT

OF THE

COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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## REVISITING THE IMPLICATIONS OF THE FACE ACT: PART II

Wednesday, December 18, 2024

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to notice, at 2:37 p.m., in Room 2141, Rayburn House Office Building, the Hon. Chip Roy [Chair of the Subcommittee] presiding.

*Members present:* Representatives Roy, Jordan, McClintock, Bishop, Kiley, Hageman, Hunt, Scanlon, Nadler, Escobar, and Balint.

*Also present:* Representatives Biggs and Lee Carter of Texas.

Mr. ROY. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time. We welcome everyone to today's hearing on revisiting the implications of the FACE Act.

Without objection, Ms. Lee Carter and Mr. Biggs from Arizona will be permitted to participate in today's hearing for the purpose of questioning the witness if a member yields her time for that purpose.

I would just like to add that I would welcome Ms. Lee Carter. We remember your mother's participation and contributions to this Subcommittee, and we look forward to having you participate here today.

I will now recognize myself for an opening statement. The reason that statues of Lady Justice show her wearing a blindfold is because it is not supposed to matter who is being judged, what they believe, or who they voted for. The rule-of-law demands an equal application of the law without fear or favor. That is why we are here today.

The FACE Act is a Federal law originally designed to equally protect access to abortion clinics, pregnancy resource centers, and places of worship by prohibiting threats of force, destruction, and property damage. Unfortunately, over the past four years, the Biden-Harris Administration has weaponized this act, disproportionately targeting prolife Americans for FACE Act violations while simultaneously failing to protect pregnancy resource facilities despite being the target of growing violence.

On May 2, 2022, a draft copy of the Supreme Court's decision in *Dobbs* was leaked to the press and gave rise to widespread attacks on nearly 100 prolife facilities and 300 Catholic churches, which were vandalized, damaged, and even firebombed. Only in the aftermath of the leak did the DOJ begin to more aggressively pursue FACE charges, yet these prosecutions did not address these significant increases in violence, but rather the largely peaceful prolife demonstrations at abortion clinics.

Since the start of the Biden–Harris Administration until May 2024, the DOJ had brought a total of 24 FACE Act cases against 55 defendants, with only two of these cases concerning attacks on pregnancy resource centers. To this day, the FACE Act has never been used in defense of a church since it was passed in 1994. When the DOJ does prosecute pro-abortion activists, the vigor with which they pursue and penalize these individuals pales in comparison to the penalties faced by prolife advocates.

Take, for example, one of our witnesses here today, Paul Vaughn, who was prosecuted for praying outside of an abortion clinic. Vaughn was arrested when an FBI SWAT team raided his home at gunpoint early in the morning in front of his wife and 11 children, later sentencing him to six months of home confinement and three years of probation.

Another FACE Act defendant, Lauren Handy, was sentenced to 57 months in prison for her role in protesting late-term abortion within our Nation's capital. I would note this happens to be an individual that I don't always align with philosophically.

In another grotesque prosecution, the weaponized Biden–Harris Justice Department recently sentenced a 75-year-old grandmother, Paulette Harlow, to a 24-month Federal prison sentence. Again, in the case of Eva Edl, an 89-year-old—I repeat, 89-year-old—death camp survivor who is awaiting Federal sentencing for her peaceful advocacy for praying for the unborn at abortion clinics, where prison time could be a potential death sentence given her age. She is a survivor, a survivor of concentration camps and abuse in Europe.

Still, you don't see the weaponized Biden–Harris Justice Department pursuing antilife activists who vandalize prolife clinics with the same vigor. One day, after the *Dobbs* leak, a pregnancy resource center near the University of Texas campus was vandalized with pro-abortion slogans. Banners were torn down, and memorial bricks were dug up from the sidewalk, all while activists chanted, "My body, my choice." No arrests were made. Similarly, a pregnancy resource center in Houston was vandalized with, "Abortion for All" written on the front of the clinic locks, gluing the entrance shut, causing \$10,000 in damage. No arrests were made.

It doesn't stop with the FACE Act, either. This law is just one tool that the Biden–Harris DOJ has issued in its years-long crusade against political dissenters. The DOJ Civil Rights Division has chosen to undermine election integrity laws, suing States like Virginia for taking steps to ensure election integrity.

The DOJ targeted Eithan Haim after he revealed that his employer, the Texas Children's Hospital, is performing illegal transgender medical interventions on minors. The DOJ Civil Rights Division opened pattern-or-practice investigation into local police departments in search of patterns of misconduct during the height of

the defund the police movement. They advised colleges on how to get around SCOTUS's ruling on affirmative action, ensuring race remains a key factor for admissions.

The Biden–Harris DOJ would rather focus its time and resources on these efforts as well as going after prolife grandmothers, sentencing them to years of Federal prison for, at best, a trespassing charge instead of targeting actual criminals.

The Civil Rights Division has been used as a tool against the civil rights of the American people, undermining their freedom and liberties. While we expect the incoming administration to end this horrific practice at the DOJ, that is not good enough. The American people deserve to know that their rights will not be violated, regardless of which administration is in power.

It has been long time for Congress to address this weaponization legislatively. The Republican Congress must start to ensure that future weaponization is not possible by passing the legislation H.R. 5577 to repeal the FACE Act. It is not enough to merely end Biden-era discrimination. We must act to reverse these wrongful imprisonments, reuniting families who have been collateral damage to this administration.

The Trump Administration should consider pardoning and commuting the sentences of FACE Act defendants who have been victims of this targeted harassment. Unequal application of the law is not truly law; it is tyranny imposed on those who didn't have the power by those who do have it. That is contrary to everything we believe as Americans.

I thank our witnesses, some of whom know these abuses all too well, for being here today to address the need for fundamental and permanent reforms at the Department of Justice.

I now yield to the Ranking Member for her opening statement.

Ms. SCANLON. Thank you, Mr. Chair. Thank you to our witnesses for joining us.

We are here today, according to this hearing's title, "Revisiting the Implications of the FACE Act: Part II." Part I occurred in May 2023, under the Chairship of now Speaker Johnson. During the intervening year and a half, things really haven't changed that much.

We continue to see heightened political violence concerning reproductive rights, particularly by right-wing extremists. We continue to see the House GOP's efforts to claim disproportionate enforcement under the FACE Act, all while ignoring the disproportionately greater number of attacks against reproductive healthcare facilities that provide abortion care. We continue to see our GOP colleagues ignoring facts and pushing a false narrative of selective enforcement to form a pretext for the repeal of the FACE Act.

What has become clear in the intervening months is that this attack on the FACE Act is part of a coordinated extreme antichoice agenda that seeks to gut reproductive rights and effectively ban abortion care in the United States. That agenda is outlined in the extremist conservative manifesto called Project 2025, which was rolled out just weeks before Part I of this hearing.

Unless our Republican colleagues once again deny any connection between Project 2025 and their actions, we should note that both parts of this hearing have parroted false narrative of Project 2025,

claiming selective enforcement against anti-abortion advocates on page—I believe it’s 568 of Project 2025.

Each of today’s majority witnesses have close ties to Project 2025. Ms. Hawley is an anti-abortion lawyer and Senior Counsel at the Alliance Defending Freedom, the ADF, which is a Project 2025 Advisory Board member. Mr. Vaughn’s arrest under the FACE Act for blockading a reproductive healthcare facility, for which he was convicted by a jury, is cited—I am sorry. It was on page 558 of Project 2025.

I do have to correct the Chair’s statement that Mr. Vaughn was arrested for praying at that facility. In fact, the record is quite clear. His arrest was for blockading the facility, not praying. Mr. Crampton, of course, was Mr. Vaughn’s attorney in that case. So, they all have close ties to this manifesto.

So, in revisiting the FACE Act today, our Republican colleagues are really just giving themselves another opportunity to signal their support to the extremists plotting to criminalize or block access to abortion across the country. The only thing that has changed since the first iteration of this hearing is public awareness of the deeply unpopular plans outlined in Project 2025.

Over the past year and a half, House Republicans have attempted to cloak their unpopular agenda with misleading claims that their policies will support women, children, and civil rights. Those claims have repeatedly turned up empty because the truth is every step we take toward a nationwide abortion ban drastically undermines the health and well-being of American women and children, and furthermore, it violates women’s rights to make their own personal medical decisions without politicians invading their doctors’ offices and their private business.

The Freedom of Access to Clinic Entrances Act, or FACE Act, protects facilities providing access to abortion and other reproductive health services as well as places of religious worship—protects them from the use of force, threats, intimidation, or physical obstruction.

The record from the Subcommittee’s hearing on this topic in May of last year is clear. There is no credible evidence to support Republican allegations that the FACE Act is being selectively enforced. Even so, if our colleagues were actually concerned about that, you would assume they would be calling for stronger and broader enforcement of the FACE Act. Instead, our Subcommittee Chair and 47 other House Republicans have introduced legislation to repeal the FACE Act.

Actions speak louder than words, and with that action, the motivation here is very clear. In repealing the FACE Act, they would invite every anti-abortion extremist to use violence, threats, intimidation to block access to abortion services everywhere, even in States where it is legal, a nationwide ban in practice if not in law.

Congress passed the FACE Act in 1994 in response to two decades of escalating violence, intimidation, and blockades against abortion providers and their patients. The need for this protection was extremely clear, as the House Judiciary Committee and the Senate Labor and Human Resources Community detailed numerous incidents in their respective Committee reports of abortion providers being subjected to horrifying threats, including murder.

Dr. David Gunn was murdered by an anti-abortion extremist outside a clinic in Pensacola, Florida, in March 1993. The House report on the FACE Act noted that Dr. Gunn's murder was the tragic culmination of years of threats, blockades, and personal attacks.

In addition to threats against providers, both Committees detailed incidents where abortion clinics were the targets of arson, bombings, chemical attacks, and blockades by anti-abortion extremists that resulted in sometimes severe injuries for doctors, clinic workers, volunteers, patients, and others.

Today, the FACE Act remains an important deterrent to political violence regarding reproductive healthcare. Since January 2021, the Department of Justice has brought 25 FACE Act cases involving 57 defendants, and yes, those cases have involved both abortion providers and anti-abortion facilities. Of course, we must condemn all political violence and threats of violence, whatever the beliefs or motivations of those who engage in it and regardless of who the target may be.

It remains that abortion providers and their patients are actually the ones who face higher levels of violence. To the extent there is a disparity in FACE Act prosecution, that disparity is a reflection of the facts.

A 2022 report from the National Abortion Federation, which we introduced into the record in Part I of this hearing, confirmed that anti-abortion violence is escalating in the wake of the *Dobbs* decision. That report detailed that there was a 100 percent increase in arsons and a 20 percent increase in threats of death and harm against clinics and providers as compared to 2021. There was also a 229 percent increase in stalking from 2021–2022, indicating an increase of reports of providers and patients being followed as they entered, exited, traveled to or traveled from clinics.

Moreover, that report noted that after the Supreme Court issued its decision in *Dobbs*, clinics in States where abortion remains legal saw a disproportionate increase in violence and destruction. This escalating violence is part of an anti-abortion extremist campaign to achieve by extralegal means what they have been politically unable to do since *Dobbs*, which is to enact a nationwide abortion ban.

This decades-long effort, which the FACE Act has helped to de-escalate, involves intimidating doctors and providers from delivering necessary and often life-saving reproductive care and denying access to healthcare facilities where women can exercise the freedom to make decisions impacting their own health and their family's well-being because, as a leader of the anti-abortion group Operation Rescue said when asked during the FACE Act passage, if there is no one willing to conduct abortions, there are no abortions.

Republican lawmakers are now trying to turn the FACE Act into yet another rallying cry in their cultural war against abortion, blatantly politicizing a law that is about protecting Americans and keeping them safe. In doing so, they knowingly enable dangerous and hostile rhetoric that threatens women's access to reproductive healthcare all across this country. Ultimately, that makes them complicit in the consequences of those actions.

No one deserves to be denied medical care because of someone else's political or religious beliefs. Everyone deserves the freedom to provide or seek appropriate medical care without threats to their

own safety, and all women deserve the freedom to work with their doctors to decide on and access the healthcare that is right for them. That is the America that my Democratic colleagues and I are fighting for because that is the America our constituents deserve.

I yield back.

Mr. ROY. I thank the Ranking Member.

I would note that at least one thing that has changed since 2023, as the Ranking Member referenced saying nothing had changed, we sent a letter to the Department of Justice. The Department of Justice responded to the letter, and I ask that we consent that we insert that in the record. Without objection, we will put it in the record.

That confirms the numbers that I cited in the opening statement, that there have been 24 FACE Act cases against 55 defendants obtaining 34 convictions, and of which only two were directed, as they say here, toward nonprolife—directed toward something that isn't attacking proliferers.

With that, I would ask the Chair if he would like to offer up any statement.

Chair JORDAN. I thank the Chair. Yes, only two.

What we forgot and what the Ranking Member didn't mention is, in the aftermath of the *Dobbs* leak and the *Dobbs* decision, that Spring and Summer, 103 churches and crisis pregnancy centers were attacked. She used the term "extremist" for the prolife people. Look. We are against all violence. I agree with that statement. That was not in any way an accurate picture of what took place in that Summer and, frankly, the disparity in who is prosecuted under the FACE Act.

Here is the bottom line. Government has been weaponized against "We the People." September 23, 2022, Mark Houck at home in Pennsylvania—ten unmarked cars pull up to his house at 6:30 a.m., and arrest him in front of his wife and seven kids. What did they arrest him for? Praying in front of an abortion clinic and protecting his son from some crazy person screaming swear words in his child's face. In fact, he was prosecuted, went to court, and the jury of his peers found him not guilty.

Twelve days after he is arrested, our witness, Mr. Vaughn, at home in Pennsylvania—arrested in front of his wife and 11 children. What was he doing? Exactly what the Chair said: "Praying and singing hymns outside of an abortion clinic." Just came and got him.

On March 5, 2024, in Mr. Bigg's State, Penny McCarthy, 66-year-old grandmother in her driveway—U.S. Marshals pull up, guns drawn, and arrest her. They said she violated parole, a parole violation for a nonviolent offense from 25 years earlier. They show up with guns drawn and arrest this lady. She said, "I think you got the wrong person." Guess what: She was right. They had the wrong person.

Of course, we had a hearing on this right here in this room. Bryan Malinowski. Bryan Malinowski—the top official, highest paid official in the municipal government in Little Rock, Arkansas, gun hobbyist. Sold six guns, and the ATF said, "You're a felon because you sold six guns without a license." They show up. Again, ten cars show up at 6:01 a.m.

First thing you see—because we got the video. The first thing they do is walk up and put tape on the doorbell cam. Fifty-three seconds after they put tape on the doorbell cam, Bryan Malinowski is shot and later dies. They weren't even—this wasn't even an arrest warrant. This was a search warrant. They have been surveilling this guy for two weeks. They were going to go the week before, but found out he wasn't home, so they waited for him to be home to—you can't make any sense of what they did.

Government has certainly been weaponized against “We the People.” Of course, last week—what did we find out last week? Two Inspector General reports came out last week. The first one said when Chris Wray first started at the FBI, they spied on Capitol Hill staffers. Here's the amazing thing: One of the guys they spied on is the guy who's going to replace Chris Wray. They spied on Kash Patel, got the email. Who are you emailing to? Emails coming in to you, phone calls—did that to—and it was Democrats, too. Democrats should be just as outraged. They were spying on Republican and Democrat staffers.

Of course, the second report that came out last week from the Inspector General—we find out that there were 26 confidential human sources here in the Capitol, at the Capitol. Well, some of them came into the Capitol, 26 of them on January 6th. Seventeen went into the restricted area. Four went into the Capitol. Zero were arrested.

Remember, confidential human source is a fancy name for spy—spying on Americans that day. We also know they spied on parents, right? Spied on moms and dads going to school board meetings. We know. They have to set up a snitch line. You could report on parents. One of the FBI whistleblowers came and testified in front of this Committee—this Congress told us he was sent to go get license plates from parents in the parking lot when they're at a school board meeting. Our government is doing that.

Of course, all this makes me wonder, are they spying? Might they be spying on prolife activists, other Americans who are concerned about the sanctity of human life? Might they be doing that? Well, guess what: They tried that, too. They tried that, too, because we got the memorandum from the Richmond Field Office earlier this Congress.

On page 4 of this memo says,

We now have new opportunities to mitigate violent extremism threat through outreach to traditional Catholic parishes and the development of sources with the placement and access to report on places of worship.

Now, that is fancy FBI-speak for, “We are going to put spies in the parish, spies in the church in America.” All this stuff happened. So, thank the good Lord we had a change in this administration back on November 5th.

I want to thank the Chair for his tireless work on advocating for the sanctity of life and looking at this law. I want to thank Ms. Hawley, Mr. Vaughn for what you have been through, both of you for coming and testifying, Mr. Crampton for your good work at the Thomas More Society, and for being with us today.

Protecting the sanctity of life is critically important, and just as important is the First Amendment, your right to speak, your right to pray, all the rights we enjoy under the First Amendment. That

is why this Committee, which is charged with protecting the Bill of Rights, the Constitution, and those important freedoms we have as Americans, is so darn important.

I thank the Chair for all his good work and yield back.

Mr. ROY. I thank the Chair.

Now, with that, I would recognize the Ranking Member of the Full Committee, Mr. Nadler, for his opening statement.

Mr. NADLER. Thank you, Mr. Chair. Mr. Chair, since the last time this Subcommittee held a hearing on the Freedom of Access to Clinic Entrances Act, or the FACE Act, over a year ago, Judiciary Republicans have found no, zero, credible direct evidence that supports their speeches' claims regarding what they allege is the Department of Justice's uneven enforcement of the FACE Act.

What has changed since then is that the Subcommittee Chair, along with 47 of his fellow House Republicans, have once again said the quiet part aloud. They have introduced a bill to repeal the FACE Act altogether. That is right. Anti-abortion extremists continue to use violence, threats, and destruction to curb access to abortion, so Republicans want to repeal the law that explicitly protects patients, providers, and facilities that provide reproductive health services from these ongoing threats.

Republicans claim that prosecutors are selectively targeting anti-abortion protesters under the FACE Act and declining to prosecute threats against anti-abortion facilities. There is zero evidence for their claims. On the contrary, it appears that DOJ is enforcing the law without regard to defendants' viewpoints.

I fear, however, that once Republicans complete their takeover of the Federal Government next year, they will use these sham allegations as a pretext to put a bill revoking the FACE Act's important Federal protections on President Trump's desk. This would represent a dangerous and unacceptable attack on public safety.

The FACE Act was enacted because of a long-documented history of violence specifically directed against abortion providers, their staff, and their patients. The American people need strong enforcement of the law even more now in the wake of continued and escalating violence, threats, and intimidation against women and their doctors post-*Dobbs*.

According to the most recent report issued by the National Abortion Federation, anti-abortion extremists have intensified their efforts to block access to abortion facilities in those States that protect the right to obtain an abortion. Even by their own terms, FACE Act repeal is a nonsensical course of action. If House Republicans' supposed concern is uneven enforcement of the FACE Act, why wouldn't they simply call for the incoming Trump Administration to prioritize cases involving protection of anti-abortion facilities, which are explicitly protected under the FACE Act?

Instead, the Chair and his Republican colleagues have come up with a new, equally farcical pretext for attacking the FACE Act: They believe that it is unconstitutional and should be eliminated altogether. While the Supreme Court has not weighed in on the constitutionality of the act, that is because, as far as I can tell, every Federal Circuit Court of Appeals that has considered the issue has upheld the FACE Act against challenges that the law vio-

lates the First Amendment's free speech guarantees or exceeds Congress's authority under the Commerce Clause.

House Republicans' manufactured narrative about the FACE Act, however, makes perfect sense if one recognizes that their ultimate goal is to ban abortion nationwide. House Republicans clearly feel more beholden than ever to the special interests of anti-abortion activists over the will of the American people, a majority of whom reject their extreme anti-abortion agenda.

As we stand on the eve of the next Trump Administration, today's hearing, the last of the Judiciary Committee in the 118th Congress, can only be interpreted as a message from House Republicans to these extreme anti-abortion activists. That message is, "Sit tight," because Republicans will use the 119th Congress to lay yet another brick in the groundwork for the Trump Administration's plans to use complete Republican control of the Federal Government to block women from obtaining the reproductive health-care they need, all while inching toward enacting a total nationwide ban on abortion.

The House Democrats will not stay silent in the face of this onslaught. We will do everything within our power to protect the right to an abortion and to resist Republican efforts to enact a nationwide abortion ban.

I yield back.

Mr. ROY. Without objection, all their opening statements will be included in the record.

We will now introduce today's witnesses. Mr. Paul Vaughn—Mr. Vaughn is a prolife advocate and the President of Personhood Tennessee, an organization dedicated to the advancement of the recognition and protection of life from conception to natural death. He was prosecuted under the FACE Act by the Biden's Department of Justice for praying and singing hymns outside an abortion clinic.

Ms. Erin Hawley—Ms. Hawley serves as Senior Counsel and Vice President of the Center for Life and Regulatory Practice at the Alliance Defending Freedom. Prior to joining ADF, she specialized in appellate law in private practice and has litigated extensively before various Federal Appellate Courts and the U.S. Supreme Court. She also previously served as an Associate Professor of Law at the University of Missouri, where she taught constitutional law, Federal income tax, and other courses.

Mr. Steve Crampton—Mr. Crampton is a Senior Counsel at the Thomas More Society, a nonprofit public interest law firm that focuses on cases involving individual liberty. He has more than 30 years of experience litigating religious liberties cases in both the civil and criminal justice systems.

Professor Jessica Waters—Ms. Waters is an Assistant Professor of Justice, Law, and Criminology at the American University. She also serves as the Director of the American University School of Public Affairs Leadership Program. Her research focuses on higher education leadership, student success, and reproductive rights law and policy.

We thank our witnesses for appearing today, and we will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect that the witnesses have answered in the affirmative.

Thank you. Please be seated. Please note that your written testimony will be entered into the record in its entirety. Accordingly, we ask you to summarize your testimony in five minutes.

Mr. Vaughn, you may begin.

I would remind everybody to turn your microphones on before you speak.

#### **STATEMENT OF PAUL VAUGHN**

Mr. VAUGHN. Chair Roy, Ranking Member Scanlon, and the honorable Members of this Committee, thank you for entertaining this important discussion today and allowing me to share our story with you.

I'd like to speak to you about the DOJ's Project 2022. It happened October 5th at 7 a.m. in the morning, when my house was assaulted, my wife and children were terrorized, and I was kidnapped at gunpoint by four armed men.

I had just sent three of my children to the car so I could take them to school when the house began to shake from a loud banging near the front door. I heard men shouting on my porch, "Open up. FBI." The banging continued.

As I looked out a side window to check the location of my children, I saw two unmarked SUVs with lights flashing but I did not see my children. The banging continued and I heard more shouting. I opened the curtains on the front door to find three men with guns trained on the door.

I asked who they were looking for and they replied, "We're here for you." They did not identify me or provide identification for themselves. As I believed there was an imminent threat to the safety of my wife and seven children who were home that day, I determined to surrender myself to them, hoping that they were legitimate law enforcement.

I opened the door and stepped out onto the porch, staring down the barrels of both a pistol and an automatic weapon pointed at my head.

As I did, I asked what authority they were operating under and if they had any identification. I later learned at the same time three of my children, ages 12, 14, and 18, were being detained in the side yard on the edge of the woods by a fourth armed man.

I was taken without the presentation of a warrant or identification when requested. Make no mistake, this was an armed conflict, and I was unarmed. Lethal force was abused and to abridge my God-given and constitutionally secured rights.

At the moment of being placed in handcuffs I became a slave to ideological tyrants, either the ones holding the weapons or the ones they obeyed.

The event that brought this ill-fated drama to my front door took place 18 months prior, as been noted. Pro-life Christians gathered at carafem abortion clinics in Mount Juliet to attempt to save unborn children that were scheduled to die that morning.

Out of the couple hundred people who attended that day eight adults were, in fact, arrested for nonviolently sitting at abortion clinic doors for doing a sit-in like many of you have seen right here in your own buildings by Antifa, BLM, and Hamas. I wonder how many of those have faced 10 years of prison for those activities.

The fact remains that I did not do any of these things. I did nothing that was outside constitutionally protected free speech and religious freedom.

I did nothing that day that I've not done many times since FACE was passed in 1994. I did not sit in. I broke no laws, Federal or local, and I was not arrested the day of the event. Yes, Member Scanlon, I did pray that day.

I had talked with the police chief and lead negotiating team. I helped the police and the proliferers by messaging back and forth.

The police spokesperson complimented us on the peacefulness nature of the event on the evening news. The lead negotiator testified for us in our Federal trial. There's a lot of talk about violence around the issue of abortion.

Of course, all people of honor and character denounce acts of violence on either side of this issue. The narrative has been projected against the prolife people and fails to take into account at least three other aspects of violence around this issue.

There is violence committed against every unborn child in every abortion. There's violence committed by aggravated fathers or other family members of aborted children and there's violence being done to proliferers by our own government.

Any serious conversation about violence, going forward, needs to include these three facts. The FACE Act was ostensibly passed because of violence. As my family knows very well, all it did was give violence the cover of law and place it in the hands of the government.

The phrase "the process is the punishment," and the weaponization of the FACE Act are not just words in our household. We are living the reality of those words.

Since my arrest, I've been restricted to the Middle District of Tennessee for over two years under control and supervision of the Federal Government. My family spent 20 months of having a potential decade in prison hanging over their lead provider's head—my head.

We endured long, stressful days of the actual trial, enduring lies and half-truths for the sake of government winning a case with no regard to actually seeking justice.

The process has entailed government agents invading and inspecting our home, calling my home to make sure I'm obeying the rules. It involved giving up my rights as a U.S. citizen in spite of the novel use of the 1,800 conspiracy laws.

The Appeal Court refused to stay the order pending the appeal to find out if this was a legal right—application of the law.

All this process is a punishment, and I was the one that did not get jail time. There are those who are in jail today while we are discussing this abuse, some of them for over a year at this point.

With the overturning of *Roe* and the long train of abuses of the unequal application of the FACE Act there is no legitimate reason for it to remain on the books. It is a tool whose sole purpose is to

stifle free speech and abuse the rights of Christian conservatives. There is nothing that the FACE Act does that is not already accomplished by State laws across the land.

If abortion is returned to the States, so should the laws governing it.

[The prepared statement of Mr. Vaughn follows:]

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## Subcommittee on the Constitution and Limited Government of the Committee on the Judiciary

Revisiting the Implications of the FACE Act: Part 2

December 18, 2024

### **The Morning Raid**

On October 5<sup>th</sup>, 2022, at approximately 7:15 in the morning, my house was assaulted, my wife and children were terrorized, and I was kidnapped at gun point by four armed men.<sup>1</sup> I had just sent three of my children to the car so I could take them to school. As I gathered my final items needed for an important business meeting later that day, the house began to shake from a loud banging on the front of the house. I heard men shouting on my porch, "Open up, FBI". The banging continued. As I looked out of a side window to check on the location of my children, I saw two unmarked SUVs with lights flashing, but I did not see my children. The banging continued and I heard more shouting, "Open up, FBI!". I opened the curtains on the front door to find three men with guns trained on the door. I asked who they were looking for and they replied, "We're here for you". They did not identify me by name or provide any identification for themselves.

As I believed there was an imminent threat to the safety of my wife and 7 children who were home that morning, I determined to surrender myself to them with nothing more than hope that they were legitimate law enforcement.

I opened the door and stepped out onto the porch staring down the barrels of both a pistol and an automatic weapon of war pointed at my head, with another agent carrying his long gun at a low ready position behind the first two. As I did, I asked what authority they were operating under and if they had identification. I later learned that at the same time, three of my children ages 12, 14, and 18 were being detained in the side yard on the edge of the woods by a 4th man.

These men were in full tactical gear, armed with weapons of war, but not in uniform. I was taken without the presentation of a warrant or identification when requested. In fact, one man showed a desire to escalate the lethal risk my family and I faced that morning by responding to my request for identification and authority with taunts. As he puffed out his chest, he poked his finger on the Velcro patch labeled "FBI" and shouted, "This is the only identification you get".

Make no mistake, this was an armed conflict, and I was unarmed. Lethal force was abused to abridge my God given and constitutionally secured rights. At the moment of being placed in handcuffs, I became a slave to ideological tyrants, either the ones holding the weapons or the ones they obeyed. Either way, I had no rights and was completely under the control of four armed men, who could have just as easily have been Al Qaeda as respectable US law enforcement. As it turns out they were neither. The constitution, as it relates to me and my family, was torn to shreds and left under the boots of these men as they escorted me to their car in handcuffs.

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<sup>1</sup> For a 5-minute statement from the family members and video footage following the arrest see:  
<https://rumble.com/v5zv338-fbi-raid-audiogram.html>

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### The Ride

Agent Sterling Wall (Figure 1) appeared to be the lead of the four agents on my arrest. He signed the warrant confirming my arrest<sup>2</sup> and was the one who drove me to the holding cells beneath the federal courthouse in downtown Nashville. Agent 3 accompanied us. Although I had no eyeglasses to read the warrant, Agent Wall did pull it up on his laptop once I was in the back seat of his car and in custody. None of the men offered any information to my wife although she asked repeatedly what this was about. The fact is from roughly 7:15 that morning until I was arraigned around 2 pm and then dumped on the streets of downtown Nashville, over 60 miles from my home, without a wallet, phone, id, or any personal effects. No one who knew me knew where I was or why I was kidnapped off my porch. During this time, I had been shackled, fingerprinted, had my DNA stolen under duress, and was thrown into a holding cell with felons. While I endured this litany of injustice and humiliation, my children had it far worse. The household was in emotional shambles as my 12-year-old was curled up in a ball sobbing in tears, my 18-year-old was fighting back stress and adrenal sickness, my wife attempted to offer support without any knowledge of who had taken me and why. We determined later the agents did not go through my local sheriff; they didn't notify any Tennessee Law enforcement. They simply showed up with lethal force, guns pointed at my head and kidnapped me off my front porch in front of my family.

As we pulled out of my driveway Agent Wall called Mark Shafer to inform him, I was in custody. I witnessed the call and saw the name on the caller ID. This left the obvious question in my mind who is Mark Shafer? Was he the one that ordered the Gestapo hit on my house? Is he the one who chose not to call me to request I self-surrender, like the co-defendants in other jurisdictions were able to do? I have no criminal record. I have lived in the same house for 17 years. I own a local business serving the community I live in. Why was a lethal force raid needed to secure the warrant for my arrest? Who gave that order?

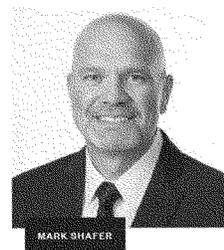


Figure 7 Mark Shafer

### The Event in Question

The reason for all this drama is a pro-life event that occurred 18 months prior to my arrest. On March 5th of 2021 a handful of pro-life Christians gathered at the Carafem Abortion Clinic in Mount Juliet Tennessee to attempt to save unborn children who were scheduled to die that morning.

Ultimately there were 8 adults arrested that day for passively and peacefully refusing to leave the premises when requested by the police. They did not do this in rebellion against the police, but to identify with the unborn who are unable to leave the womb where they are scheduled to be terminated.

I did nothing different that day, that I have not done since the FACE Act was passed in 1994. I was not arrested the day of the event. I broke no laws, federal or local. In fact, we were expecting our 11<sup>th</sup> child, and I promised my wife I would stay out of any trouble. So, I was very careful to stay within the legal lines. I had sidewalk counselors on site that day I was responsible for as well as my own children. When one particular police officer seemed agitated, I want to talk with him to make sure he understood the purpose of us being there that day and insure him the people onsite were not violent and had great respect for the police in contradiction to many other protest groups in our nation in recent years.

<sup>2</sup> See Exhibit 1 Returned Arrest Warrant: <https://app.box.com/s/bhr0j2nu9mekbj7ts9dppcboc2tmi6q6>

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I ended up talking with the police chief and the lead negotiating team as a desire to make sure everyone was safe and to help them both understand what was going on and to bring a peaceful resolution to the event. I helped the police and the pro-lifers that day as a messenger between the two groups. The police spokesperson complimented the peaceful nature of the group in the media that afternoon.<sup>3</sup> The lead negotiator for the Mount Juliet Police Department who I interacted with that day testified at our federal trial on our behalf.

There is evidence from the trial that Mark Shafer showed up at the Carafem clinic at 10:51 AM the day of the event and was identified as being with "the FACE unit FBI" to conduct interviews and began his investigation<sup>4</sup>. He submitted a subpoena request to the Middle TN District court that was signed by Magistrate Judge Frensey.<sup>5</sup> By all reasonable evidence available he seems to be the lead investigator in this case and perhaps oversaw executing the warrants for arrest. If so, why did he choose to bring lethal force to my front door when a phone call accomplishes the same goal? Did he give the order, or did it come from higher in the chain of command? He was promoted 30 days after my arrest to The Office of Congressional Affairs in Washington D.C. Was this new position as Supervisory Special Agent a direct result of his execution of my arrest?<sup>6</sup> Was his subsequent retirement during the heat of the election an attempt to avoid the justice President Trump promised?<sup>7</sup> These are some of the questions Congress should be asking in their oversight capacity. This is just one way the FACE Act is being used as a weapon against the free speech and religious freedoms of conservative Christian Americans.

#### The Reproductive Task Force

Between the event in March of 2021 and the raid on my house in October of 2022, there was a central event that happened. The Supreme Court overturned the previous rulings related to abortion. Instead of the Department of Justice enforcing the laws of the land, they chose to oppose the Court. In June of 2022, Merrick Garland stated, "The Justice Department strongly disagrees with the Court's decision."<sup>8</sup> As a result of that disagreement I believe the DOJ formed their own personal office of warfare, called "The Reproductive Health Task Force" in July of 2022.<sup>9</sup> There have been multiple presentations to this Committee regarding the unequal application of the FACE Act by this task force and their enforcement through the FBI since that time. Our case is yet another abusive case against pro-lifers, while many more attacks against pro-life pregnancy centers go uninvestigated.<sup>10</sup> I will limit myself to pointing out a few ideological statements of the members and contributors of that task force that seem to show they were operating beyond the limits of their office and were potentially using their office to advance their own personal ideology.

<sup>3</sup> Mount Juliet Press Statement from the event: <https://www.wkrn.com/video/mt-juliet-authorities-provide-update-on-trespassing-arrest/6409668/?ipid=promo-link-block1>

<sup>4</sup> Exhibit 2 - Clinic Staff Written Interview: <https://app.box.com/s/fvdx0kyvln7hxrmutort36zb8ricv01g>

<sup>5</sup> Exhibit 3 - Search Warrant submitted by Mark Shafer: <https://app.box.com/s/qv8ye7co0gqf5behk0ht4xtnd7bb1sw>

<sup>6</sup> See Exhibit 4 - <https://www.linkedin.com/in/mark-shafer-690420220/>

<sup>7</sup> See Exhibit 4 - <https://www.lipscomb.edu/news/26-year-fbi-veteran-mark-shafer-appointed-lipscomb-university-campus-security-chief>

<sup>8</sup> AG Statement on SCOTUS Ruling in Dobbs v. Jackson. <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-supreme-court-ruling-dobbs-v-jackson-women-s>

<sup>9</sup> Formation of the Reproductive Health Task Force: <https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>

<sup>10</sup> First Liberty Statement from Part 1 of this Hearing: [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/dvs\\_testimony\\_0.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/dvs_testimony_0.pdf)

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**Sanjay Patel**

First, the primary legal theory used in these FACE cases to persecute and lockup Prolife Christians, was first published by Sanjay Patel, a trial attorney in the Civil Rights Division's Criminal Section.<sup>11</sup> He put forth the idea that an old KKK Law could be used in conjunction with the FACE Act to take what the US Congress determined should be a misdemeanor with a maximum of 6 months in prison and turn it into a Felony with a maximum of a 10 year Prison sentence. The following statement from his article was originally posted in the DOJ Journal of Federal Law and Practice in March of 2022.<sup>12</sup> To make the prejudice clear, there is only an "advantage" when trying to charge someone if you are no longer seeking justice, but a specific outcome that suits your ideology. Emphasis added below.

*"Therefore, an agreement by two or more persons to injure, oppress, threaten, or intimidate anyone who is seeking, obtaining, or providing reproductive health services is a cognizable violation of section 241. **There are three advantages** to charging a section 241 conspiracy when the evidence supports it. First, unlike a section 371 conspiracy, a section 241 conspiracy conviction is always a felony, even when the underlying substantive violation would be a misdemeanor. Second, section 241 violations are punishable by up to 10 years' imprisonment; or up to life or the death penalty, if certain aggravators apply. And third, under section 241, the government is not required to prove an overt act or substantial step in furtherance of the agreement."*

As bad a law as the FACE Act is, it would seem the section 241 conspiracy should be re-visited by Congress as well. Apparently, you don't have to commit an "overt act" or "do anything to further the conspiracy", you simply have to be ideologically aligned with those who do. This sounds much more like Russia or Germany than the freedom loving country America is supposed to be.

**Kristen Clarke**

Pointing out the inconsistencies of a person like Kristen Clarke is like pointing out a grizzly bear to someone who is in the tree above it. They are obvious, and the potential for harm is self-evident if you are a Prolife Christian. Ms. Clarke has never pretended to be even handed on the topic of abortion or for conservatives in general. She has labeled pro-life resource centers as fake clinics, called a prolife legal firm a hate group, and attacked prolife legislation.<sup>13</sup>

Kristen Clarke is someone who has a violent past which she attempted to concealed during her confirmation process.<sup>14</sup> The idea that her name is on the indictments against a group of peaceful people who have repeatedly volunteered thousands of hours standing outside America's abortion clinics to stop violence is one of the most egregious aspects of this trial.<sup>15</sup>

There seems to be a discernable prejudice in Ms. Clarke positions, which seem to have motived the attacks against me and other prolife Christians. If that is true, the FACE Act was the vehicle for those apparent prejudices to be applied. If it is not true, then the FACE Act is still being unjustly applied to one group and not another for some other unexplainable reason.

<sup>11</sup> Exhibit 5 - FACE Off with Anti-Abortion Extremism: <https://app.box.com/s/sh99mvpqg91lqlwixg7fg271otctpm5t>

<sup>12</sup> DOJ Journal of Federal Law and Practice <https://www.justice.gov/usao/page/file/1492851/d/>

<sup>13</sup> Exhibit 6 - X posting collections from Kristen Clarke: <https://app.box.com/s/a9dczksb5o060xroa6ugwpt8f0uro8i2>

<sup>14</sup> Exhibit 7 - A3P Criminal Referral for Kristen Clarke: <https://app.box.com/s/c7sdkuzqx5piznbfp14xcdgg7vxu8e4>

<sup>15</sup> Exhibit 8 – Indictment by Kristine Clarke: <https://app.box.com/s/d6ucsfnaeww1do3g0np0zd0dpy1b5078>

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**Kamala Harris**

If The Reproductive Rights Task Force was going to be equal to both sides of the reproductive health debate, we might expect there to be equal representation on the task force itself. But sadly, there is not one pro-life person who was tasked with the job. There is no representation of the Crisis Pregnancy Centers or someone who speaks on behalf of unborn children. Vice President Harris, who oversees the Reproductive Rights Task Force, is one of the most pro-abortion politicians in American politics and even if there were some pro-life members on the Committee, she would greatly tilt the scale in the pro-abortion favor.<sup>16 17</sup>

It is important to note, that while Vice President Harris was meeting with the Reproductive Rights Task Force on October 4<sup>th</sup>, 2022, talking about “these attacks on women”,<sup>18</sup> They were not referencing physical attacks, but they were referencing laws that were being passed and the overturn of Roe v. Wade. But on the very same day the VP was having this discussion, the physical violent attack on my house was being planned for the following morning. We are often wrongly accused of violence, but the FBI at the behest of the task force used physical violence against me, my wife, and my children as already noted above. I heard this very subcommittee members talk about denouncing violence in all forms in Part 1 of this hearing. I want to challenge those members to denounce the violence that happened to me and my children as well. We have a remedy at law when violence is perpetrated by civilians against other civilians, but we have little recourse when violence is committed against civilians by the government they pay to serve and protect them.

It is also important to note that while there is ample federal guidance on dealing with children in a situation where an arrest is anticipated, the task force had no concern for my children and failed to follow the guidance so readily available to them.<sup>19</sup>

The phrase we have heard often through all of this, is “The process is the punishment”. We would like to continue to believe in the good faith of our government and think the best of all involved. But when something so egregious happens to you and to those you love it is very difficult. You like to think that perhaps it was just ignorance, or they didn’t realize the impact this mistake was going to have on your family. But then you find a quote like this from when Kamala Harris was a presidential candidate, and you realize the FACE Act in the hands of evil people is a weapon of destruction that must be neutralized.

“I learned, I think I was, I don’t know, twenty-two when I started that work, I learned that with the swipe of my pen I could charge someone with the lowest level offense. And because of the swipe of my pen, that person could be arrested, they could sit in jail for at least forty-eight hours, they could lose time from work and their family, maybe lose their job, they’d have to come out of their own pocket to help hire a lawyer, they’d lose standing in your community, all because of the swipe of my pen. Weeks later I could dismiss the charges, but their life would forever be changed. So I learned at a very young age the power...”<sup>20</sup>

<sup>16</sup> Kamala Harris Abortion Position: <https://www.marieclaire.com/politics/a33623181/kamala-harris-stance-on-abortion/>

<sup>17</sup> Kamala Harris Abortion Position: [https://www.ontheissues.org/2020/Kamala\\_Harris\\_Abortion.htm](https://www.ontheissues.org/2020/Kamala_Harris_Abortion.htm)

<sup>18</sup> Reproductive Task Force Meeting 10/4/2022: <https://vimeo.com/757657924>

<sup>19</sup> Safeguarding Children of Arrested Parents: <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/IACP-SafeguardingChildren.pdf>

<sup>20</sup> Kamala Harris Swipe of my pen statement: [https://archive.org/details/CSPAN\\_20190909\\_082900\\_Campaign\\_2020\\_Sen.\\_Kamala\\_Harris\\_at\\_Portsouth\\_NH\\_Democrats\\_Dinner/start/1180/end/1250](https://archive.org/details/CSPAN_20190909_082900_Campaign_2020_Sen._Kamala_Harris_at_Portsouth_NH_Democrats_Dinner/start/1180/end/1250)

#### **The Trial – The Process is the Punishment**

Given all that is documented above it is unfathomable that a sitting federal judge would allow this case to be brought against anyone on either side of the abortion issue. But again, if the judge is an ideological ally with those bringing the case, is there really hope for justice? The fact that the judge allowed the trial to proceed when the DOJ advertised, they were going to reapply a law meant for murderous attacks on African Americans in the 1800's to peaceful pro-lifers says volumes about our courts.

By applying the conspiracy law to the FACE Act my individual rights were abridged. Every statement by everyone in the supposed conspiracy applied to me regardless of my knowledge about the statements or if I was even present when they were made. The purpose was to take people who agree ideologically and deny them the right to due process based on their beliefs rather than their actions. The punishment has already been meted out by the process and there can be no restitution that will ever make amends for the injustice this administration has inflicted upon its people.

It has been over 2 years of federal parole monitoring either presentence or parole, 20 months of having a potential decade in prison hanging over our head, stressful weeks in the actual trial, enduring lies and half-truths for the sake of winning a case and not for seeking justice, pre-sentencing monitoring, sentencing 6 months after the guilty verdict, government agents inspecting our home, calling my home making sure I'm obeying their rules, giving up our rights as a US citizen, 6 months of house arrest. All of this while trying to maintain a business and some sort of normal life for my children who have been terrorized by their own government. All of this – process is the punishment, and I was one that did not get jail time. There are those who are in jail and are still awaiting an appeals court to review this new and novel application of the combination of the FACE Act and the conspiracy statute. Where is this land of the free, I was told of in my civics classes?

I don't come here today demanding justice or vengeance for the injustice that has been done. I trust that God will handle that better than any of us in this room. But I do come here to declare that we have a national character crisis. As a nation we must come together.

#### **Human Life equals Human Rights**

This simple monicker applies to multifaceted parts of our national life and character and very specifically to our case that brings us before this body today.

Our case is about both the simple small innocent humans in the womb and well-developed humans who are targets of the actual civil rights division of our government. As a nation, the way we treat the small helpless unborn humans is how we are going to treat the mature grown-up humans who are our political opposition. This battle over human life has been going on for a long time.<sup>21</sup> I would ask this body to please review and repeal the FACE Act as bad legislation that serves no fundamental purpose in our nation post Roe v. Wade. But more importantly, I would ask each of us, in this committee meeting, and across our land to review our own hearts as it relates to the weak and helpless humans among us. The path forward is to first think of them as humans, and secondly to treat them the way we want to be treated during our lifetime. It is a pretty basic concept; we used to call it the golden rule. Perhaps the path forward for our nation is as simple as that: treat others the way you want to be treated.

<sup>21</sup> Exhibit 9 FACE Act flyer from 1993: <https://app.box.com/s/x4vsmcmlluz4qnv7birq9vwwddfdopg2d>

## Others impacted by the Reproductive Task Force anti pro-life “enforcement agenda”

### Six Serve House Arrest and extended periods of parole

In addition to myself there are 6 others who are serving or completed serving their house arrest sentence and are facing 3 years as political slaves to the justice department. Those are: Paulette Harlow, Coleman Boyd, Paul Place, James Zastrow, Eva Zastrow, and Dennis Green.

### 13 are serving or have served prison time and will face extended periods of parole

Lauren Handy, 29, is serving a 57-month sentence in FCI Tallahassee, a prison in Florida where Jeffrey Epstein’s cohort Ghislaine Maxwell is also housed. Handy’s projected release date is August 2027. Her charges stemmed from her participation in a “rescue” in 2020 in Washington, D.C.

Herb Geraghty, 26, is serving a 27-month sentence in FDC Philadelphia, a prison in Pennsylvania, for participating in the same D.C. rescue as Handy.

Heather Idoni, 62, is serving a 24-month sentence at the Sanilac County Sheriff’s jail, but is also awaiting sentencing in a separate Michigan case and in a Tennessee case, all brought by the Biden Justice Department.

Jean Marshall, 74, is serving a 24-month sentence in FCI Danbury, a Connecticut prison where Steven Bannon was formerly imprisoned by the Biden Justice Department for the same 2020 Washington, D.C. incident. Her projected release date is March 2025.

Joan Bell, 75, is serving a 27-month sentence in FDC Philadelphia, also for her participation in the D.C. rescue. Her projected release date is June 2025.

Jonathan Darnel, 42, is serving a 34-month sentence in FCI Thomson, an Illinois prison, with a projected release date of February 2026. Darnel was also imprisoned over the 2020 rescue in Washington, D.C.

William Goodman, 53, is serving a 27-month sentence in FCI Danbury, with a projected release date of July 2025, also as a consequence of the 2020 D.C. rescue.

John Hinshaw, 68, is imprisoned in FMC Devens in Massachusetts, where he will be until his projected release date of February 2025. He also was part of the 2020 rescue.

Calvin Zastrow, 63, is serving six months in FCI Thomson, with a projected release date of February 2025, and then 3 years of supervised release. He also was part of the 2020 rescue.

Bevelyn Williams, 33, is serving 41 months in FCI Aliceville, a prison in Alabama, with a projected release date of September 2027.

Three others have already served jail time and have been released: Fr. Fidelis Moscinski, a Catholic priest, Jay Smith, and Steven LeFamine.

### 4 additional defendants are awaiting sentencing

Chester Gallagher, Eva Edl who is a concentration camp survivor, Justin Phillips, and Joel Curry are pending sentencing or awaiting their surrender date to serve their time.

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# Exhibit 1

Arrest Warrant

UNITED STATES DISTRICT COURT

for the  
Middle District of Tennessee

United States of America  
v.  
PAUL VAUGHN

Case No. 3:22-00327 Judge Campbell

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay  
(name of person to be arrested) PAUL VAUGHN  
who is accused of an offense or violation based on the following document filed with the court:

- Indictment
- Superseding Indictment
- Information
- Superseding Information
- Complaint
- Probation Violation Petition
- Supervised Release Violation Petition
- Violation Notice
- Order of the Court

This offense is briefly described as follows:

Conspiracy to Obstruct Access to a Clinic Providing Reproductive Health Services, in violation of 18 USC 241, 248

Date: 10/03/2022



*Dalaina Thompson*  
Issuing officer's signature

City and state: Nashville, TN

Dalaina Thompson, Case Administrator  
Printed name and title

Return

This warrant was received on (date) 10/04/2022, and the person was arrested on (date) 10/05/2022  
at (city and state) Nashville, TN

Date: 10/05/2022

*[Signature]*  
Arresting officer's signature

STERLING C. WALL JR. SPECIAL AGENT, FBI  
Printed name and title

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# Exhibit 2

An account of 3/3/21's incidents:

I, [REDACTED] Manager of Health Services, was the first to arrive on 3/3 at approximately 7:10 am. Nothing seemed out of the ordinary. I noticed some vans in the parking lot. I thought they were for construction or maintenance.

At approximately 7:45 am [REDACTED] came in and notified me that there were a lot of extra people in the building, specifically the stairwell and the hallway outside of our suite. I said that they must be here working on the building, but they said the crowd was people of all ages and that they were filling the stairwell, but let him through easily and said "oh, don't worry about us." They got in the suite easily.

At approximately 7:47 am [REDACTED] entered the suite as [REDACTED] and I were discussing what happened. She said there is a group of protesters in our hallway and one followed her from the elevator to our door and repeatedly asked if she was going to the abortion clinic, getting really close to her face. She didn't respond and came in.

I immediately called our building security man [REDACTED]. He didn't answer, so I called MJ PD at approximately 7:48 am. I alerted them that a large group of people had filled our stairwell and hallway.

During this time, [REDACTED] came in, said she was nearly blocked from getting in, but made it through the doors. She set her stuff down and said something similar, there were people in the hallway and she wanted to get a video of them, so she immediately left. I was on the phone and didn't have a chance to respond to her leaving. She texted at approximately 7:52 that she cannot get back in. I texted her to leave the building and asked [REDACTED] to pick her up and take her away from the building since she didn't have her purse or anything. [REDACTED] was on the group message and was told not to come into the building due to the protesters. They drove across The street to the Hampton Inn parking lot. [REDACTED] sent us the video she took- attached below. In the video she sent, there is a client being harassed by the protesters. [REDACTED] was able to escort her away from them and out of the building safely.

[REDACTED] was notified immediately after talking to the police at approximately 7:50. He gave the order that we need to lock down the clinic. No one in or out.

[REDACTED] and I were in the clinic for the next approximately 2.5 hours updating [REDACTED] and [REDACTED] on developments. We could see in the security camera that nothing was changing. [REDACTED] took a voice recording of the protesters outside. They could hear them under the door. That is also attached.

During the time we were inside, we received links to live feeds of the protesters and posing from the MJ PT's Facebook page.

We never were able to hear the police outside in the hallway but wanted the protesters being escorted away from the glass door and getting into the police van at approximately 10:23 am.

At approximately 10:51 am, Mark Shafer with the FACE unit FBI was escorted up by a police officer. Mr. Shafer asked us about the events of the morning, police response, and how many clients were affected. [REDACTED], and I were still the only ones here but told him about the morning. [REDACTED] and [REDACTED] walking into the protesters, [REDACTED] coming and leaving and now them being outside, we told him about the client [REDACTED] escorted out who was being harassed by the protesters. He mentioned that he wants to talk to clients who were affected if they are willing, but he understands reluctance and does not want to pressure anyone. He asked about police responses in the past. Discussed that they seem very buddy with the protesters and we feel that they do not take our concerns seriously. At that time, what appears to be a new group of protesters were outside on bullhorns being so loud we could hear them from inside my office. I pointed it out to Mr. Shafer. There were still cops in the parking lot and nothing was being done to make the protesters obey the noise ordinance. At one point in the morning, we heard the protesters say that they were not going to leave until the chief of police got there because he is a pastor. Mr. Schafer told us he was looking at this from three angles at this point. One, a client access issue, two, a pattern of the MJPD not treating carafem like any other business in Mount Juliet, and three, a possible bias in the MJPD due to the chief being a pastor whether implicit or explicit. He spoke with a client who was harassed by the protesters and waited for an appointment. She came at approximately 11:00 am.

[REDACTED] and [REDACTED] returned to the clinic at approximately 10:55 am. We finished the afternoon of seeing clients.

The Building Manager, [REDACTED] checked on us around 1:00 pm. She expressed concern for our safety and advised us that she would have security 24 hours over the weekend.

We left the clinic around 3:15 pm as a group.

Saturday 3/4/21, two police officers came to question me about the activity at approximately 8:30 am. They asked me for my birthdate and phone number. They asked me "who could trespass people" if it was building management or if I could do it. I told them that I can ask people to leave and if they do not, I can call the police, but I wasn't sure really what their question was. They told me that they needed to see if the building was "ok" with protesters inside. They said they know we are not and they are not, but they need the people that are in charge to also say they are not. They left after approximately 5 minutes. [REDACTED] took a video of the last part of the conversation.

All videos and pictures are being emailed to you. Anything that others sent, I will forward to you as well, links to live streams/ Facebook posts.

Paul Vaughn Statement before the Subcommittee on the  
Constitution and Limited Government of the Committee on the Judiciary  
Revisiting the Implications of the FACE Act: Part 2

# Exhibit 3

286A-ME-3402254 Serial 30

- 1 of 1 -

FD-302 (Rev. 5-8-10)

## FEDERAL BUREAU OF INVESTIGATION

Date of entry 02/25/2022

A search warrant was issued in the United States District Court for the Middle District of Tennessee by Judge Frensky on February 23, 2022. The search warrant requests information from Google, LLC for specific information associated with two accounts, which are identified as [wearerescuers@gmail.com](mailto:wearerescuers@gmail.com) and [chetgallagher@gmail.com](mailto:chetgallagher@gmail.com). A copy of the warrant is included in the investigative file as an attachment.

The search warrant was served on February 25, 2022 by SA Mark Shafer to Google, LLC on their law enforcement portal, [lers.google.com](https://lers.google.com). After submitting the warrant, SA Shafer received a confirmation from Google, LLC and tracking number 12370439.

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Investigation on 02/25/2022 at Nashville, Tennessee, United States (Email)  
File # 286A-ME-3402254 Date drafted 02/25/2022  
by Mark Shafer

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

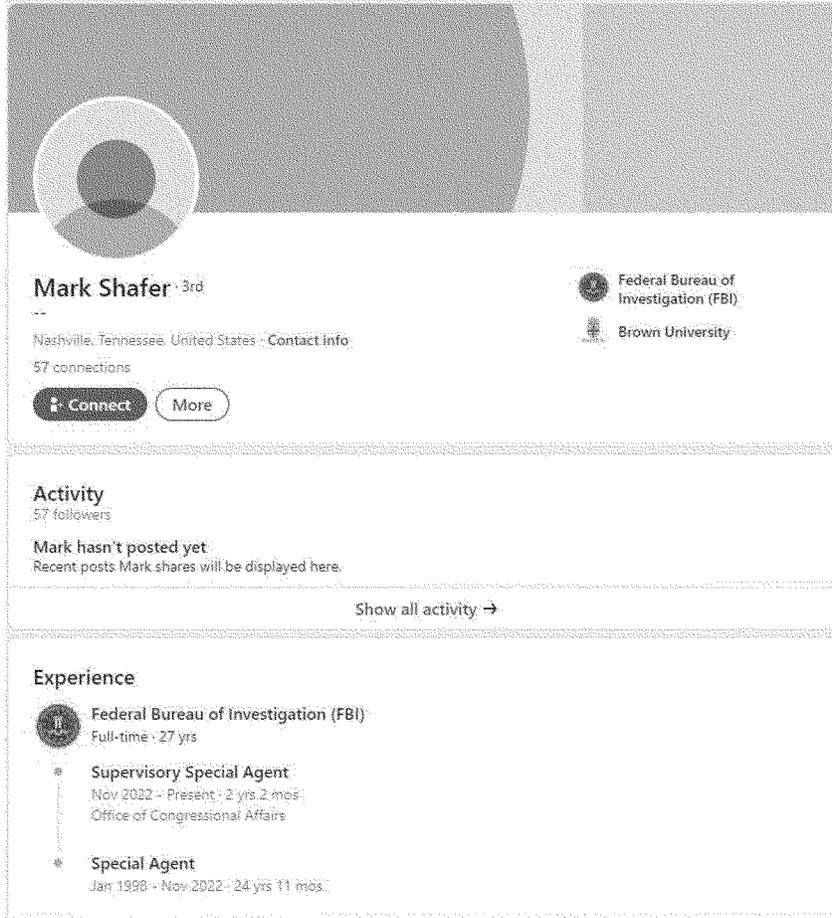
U.S. v. Gallagher, et al. 000190

Paul Vaughn Statement before the Subcommittee on the  
Constitution and Limited Government of the Committee on the Judiciary  
Revisiting the Implications of the FACE Act: Part 2

# Exhibit 4

Mark Shafer – SAIC for Raid on my house on Oct 5, 2022. Promoted to Office of Congressional Affairs Nov 2022.

<https://www.linkedin.com/in/mark-shafer-690420220/>



The image shows a LinkedIn profile page for Mark Shafer. The profile picture is a circular icon with a dark center and a light outer ring. The name 'Mark Shafer' is followed by '3rd' and a small icon. Below the name, the location 'Nashville, Tennessee, United States' and 'Contact info' are listed. To the right, two organizational logos are shown: 'Federal Bureau of Investigation (FBI)' and 'Brown University'. Below the location, it says '57 connections' and there are two buttons: 'Connect' and 'More'. The 'Activity' section shows '57 followers' and a message: 'Mark hasn't posted yet. Recent posts Mark shares will be displayed here.' Below this is a link 'Show all activity →'. The 'Experience' section lists two roles: 'Supervisory Special Agent' from Nov 2022 to Present (2 yrs, 2 mos) at the Office of Congressional Affairs, and 'Special Agent' from Jan 1998 to Nov 2022 (24 yrs, 11 mos).

**Mark Shafer** · 3rd

Nashville, Tennessee, United States · [Contact info](#)

57 connections

[Connect](#) [More](#)

**Activity**  
57 followers

Mark hasn't posted yet.  
Recent posts Mark shares will be displayed here.

[Show all activity →](#)

**Experience**

- Federal Bureau of Investigation (FBI)**  
Full-time · 27 yrs
  - Supervisory Special Agent**  
Nov 2022 – Present · 2 yrs, 2 mos  
Office of Congressional Affairs
  - Special Agent**  
Jan 1998 – Nov 2022 · 24 yrs, 11 mos

## 26-year FBI veteran Mark Shafer appointed Lipscomb University campus security chief

Kim Chaudoin | 08/12/2024

<https://www.lipscomb.edu/news/26-year-fbi-veteran-mark-shafer-appointed-lipscomb-university-campus-security-chief>

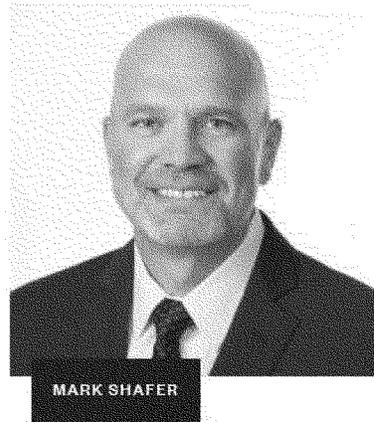


Federal Bureau of Investigation Special Agent **Mark Shafer** has been appointed Lipscomb University's chief of campus security.

Later this month, Shafer will retire from the FBI after a 26-year career. He will begin his work with Lipscomb on Sept. 8.

“The safety and security of our students and the entire Lipscomb community is a top priority,” said **Lipscomb President Candice McQueen**. “His expertise in multiple facets of security, identifying and mitigating risk, and proactive response planning and execution of complex security initiatives along with his commitment to Lipscomb’s mission make Mark uniquely qualified to lead this office and will help us continue to expand our focus on this vitally important aspect of our community.”

Shafer began his FBI career in 1998 in the Miami field office, where he served as a special agent. During his tenure with the bureau, he was promoted to Supervisory Special Agent in the Counterterrorism Division at FBI headquarters in Washington, D.C., and was later assigned as a special agent to the Nashville Division, Nashville Resident Agency, a role that he held for 15 years. Following that assignment, Shafer served as a Supervisory Special Agent in the Office of Congressional Affairs in Washington, D.C. In this role, he served as a liaison to Congress, particularly to the Senate Judiciary Committee, which has direct



oversight of FBI operations. Shafer succeeds **Jeff Dale**, who left his post at Lipscomb this summer as he was appointed executive director of the new Multi-Agency Law Enforcement Training Academy envisioned by Tennessee Gov. Bill Lee.

“It is an honor to join the Lipscomb community in this capacity, and I am drawn to it because of its Christ-centered mission and the impact it has on the lives of its students,” said Shafer. “I am eager to join the team of dedicated security professionals already engaged in this great responsibility and to continue the great work of my predecessor. I look forward to drawing upon my law enforcement training and collaborating with the faculty, staff, students and parents as we focus on our service-oriented mission to safeguard the Lipscomb community.”

Shafer holds a Bachelor of Arts degree from Brown University and a Juris Doctorate from the University of Miami School of Law. He is an active member of the Tennessee Bar Association and is a Certified Legal Advisor for the FBI.

Paul Vaughn Statement before the Subcommittee on the  
Constitution and Limited Government of the Committee on the Judiciary  
Revisiting the Implications of the FACE Act: Part 2

# Exhibit 5

# FACE Off with Anti-Abortion Extremism—Criminal Enforcement of 18 U.S.C. § 248 (FACE Act)

*Sanjay Patel*  
*Trial Attorney*  
*Civil Rights Division*  
*Criminal Section*

## I. Introduction

On October 23, 1998, at approximately 10:00 p.m., Dr. Barnett Slepian was killed as he stood with his family in the kitchen of his home. He was shot by a sniper who fired a single gunshot from a distant wooded area. The bullet entered the home through a rear window. Dr. Slepian died as his wife and children tried to stem the flow of blood until help arrived. Dr. Slepian was an obstetrician-gynecologist who provided reproductive healthcare services, including abortions, at a local clinic in Buffalo, New York.<sup>1</sup>

The sniper—James Kopp—had carefully prepared to commit this act of violence for over a year. Kopp was an anti-abortion extremist who spent substantial time choosing his victim, planning the attack, and orchestrating an exit strategy. Aided by two cohorts who shared his militant anti-abortion views, Kopp fled the country immediately after he murdered Dr. Slepian. A massive international manhunt ensued, and federal investigators were able to determine Kopp's whereabouts as they tracked his movements through Europe. Finally, on March 29, 2001, Kopp was arrested in France.<sup>2</sup>

Kopp was charged with a Freedom of Access to Clinic Entrances (FACE) Act offense for killing Dr. Slepian. Kopp had admitted shooting Dr. Slepian, and investigators uncovered evidence that proved the killing was motivated by Kopp's extreme anti-abortion views. Kopp stated that he did not regret shooting Dr. Slepian.

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<sup>1</sup> See Liam Stack, *A Brief History of Deadly Attacks on Abortion Providers*, N.Y. TIMES (Nov. 29, 2015),

<https://www.nytimes.com/interactive/2015/11/29/us/30abortion-clinic-violence.html>

<sup>2</sup> See *Id.*

Kopp was convicted after a jury trial of violating the FACE Act for killing Dr. Slepian and was sentenced to life imprisonment.<sup>3</sup>

The murder of Dr. Slepian is a high-profile example of a FACE Act crime. A FACE Act offense is a crime that is motivated by the victim exercising the right to obtain or provide reproductive healthcare. A perpetrator's intentional use of force, threat of force, or a physical obstruction when a victim is exercising this right with the purpose of injuring, intimidating, or interfering is what makes the conduct a federal offense. Victimization is not limited to the person who was directly impacted by the offender's conduct. The FACE Act also criminalizes damage or destruction of property belonging to a reproductive healthcare facility.

This article provides an overview of the FACE Act and its elements, case examples to demonstrate the law's scope and limitations, suggestions for other federal criminal statutes that can be used in these cases, and a discussion on collaborations with federal partners that are necessary for successful enforcement and victim protection.

## II. Historical background

Following *Roe v. Wade*,<sup>4</sup> the 1973 landmark Supreme Court decision that recognized a woman's constitutional right to seek an abortion, anti-abortion activists launched efforts to deter patients and providers from seeking, obtaining, and providing abortions. Although much of this activity constituted legal forms of protest protected by the First Amendment, the number of illegal blockades and incidents of violence also rose steadily through the 1970s and 1980s. Tactics included bombing and burning clinic buildings, butyric acid attacks, anthrax threats, and assaults on and kidnappings of individuals employed in reproductive healthcare clinics.

In the 1990s, extremist activity escalated dramatically, particularly by those aligned with extremist groups who believed that the murder of reproductive healthcare providers was defensible as "justifiable

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<sup>3</sup> See Government's Trial Memorandum, *United States v. Kopp (Kopp I)*, No. 00-cr-189 (W.D.N.Y. Apr. 11, 2005), ECF No. 230; Government's Sentencing Memorandum, *Kopp I*, No. 00-cr-189, ECF No. 327; see also *United States v. Kopp (Kopp II)*, 562 F.3d 141 (2d Cir. 2009); Report and Recommendation, *Kopp I*, No. 00-cr-189, ECF No. 145; *Kopp v. Fischer (Kopp III)*, 811 F.Supp.2d 696 (W.D.N.Y. 2011).

<sup>4</sup> 410 U.S. 113 (1973).

homicide.”<sup>5</sup> In March 1993, the first murder of a doctor in the United States by an anti-abortion extremist occurred when a doctor was fatally shot during a protest at his clinic in Florida.<sup>6</sup> In August of 1993, a doctor survived being shot outside of an abortion facility in Kansas.<sup>7</sup> In July of 1994, a doctor and a clinic escort were fatally shot in Florida; the doctor’s wife was also shot, but she survived.<sup>8</sup> In December of 1994, two receptionists at a reproductive care clinic in Massachusetts were fatally shot and five others were wounded.<sup>9</sup> In total, there have been 11 murders and 26 attempted murders from anti-abortion violence since 1993.<sup>10</sup>

Against this backdrop of escalating violence targeting reproductive healthcare providers and facilities, Congress enacted the FACE Act in 1994 to create federal penalties for anti-abortion-related violence, threats of violence, and physical obstruction. Additionally, in 1998, two weeks after the shooting death of Dr. Slepian, the Department of Justice created the National Task Force on Violence Against Reproductive Health Care Providers to coordinate federal law enforcement efforts in the investigation and prosecution of anti-abortion violence.<sup>11</sup>

### III. 18 U.S.C. § 248—The FACE Act

#### A. Overview

The FACE Act<sup>12</sup> was enacted to protect reproductive healthcare patients and providers from violence and obstructive tactics being used to interfere with access to reproductive healthcare services,

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<sup>5</sup> *Stack*, *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* That same doctor was fatally shot at his church by an anti-abortion extremist in 2009. *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *National Task Force on Violence Against Reproductive Health Care Providers*, DEPT OF JUST., [https://www.justice.gov/crt/national-task-force-violence-against-reproductive-health-care-providers#:~:text=and%20clinics%20nationwide,-.National%20Task%20Force%20on%20Violence%20Against%20Reproductive%20Health%20Care%20Providers,1998%2C%20shooting%20death%20of%20Dr.\(updated%20Sept.%2017,%202021\).](https://www.justice.gov/crt/national-task-force-violence-against-reproductive-health-care-providers#:~:text=and%20clinics%20nationwide,-.National%20Task%20Force%20on%20Violence%20Against%20Reproductive%20Health%20Care%20Providers,1998%2C%20shooting%20death%20of%20Dr.(updated%20Sept.%2017,%202021).)

<sup>12</sup> Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248.

including abortions.<sup>13</sup> It established federal criminal penalties and civil remedies for using force, threats of force, or physical obstruction—or attempting to do so—to injure, intimidate, or interfere with any person because that person is seeking to obtain or provide reproductive health services.<sup>14</sup> The statute also provides penalties for damaging or destroying—or attempting to damage or destroy—the property of a reproductive health clinic.<sup>15</sup>

The FACE Act protects persons seeking or providing any type of reproductive health care, including gynecological examinations, breast cancer screenings, infertility treatments, prenatal care, pregnancy counseling services, and abortion services. It also protects the property of facilities that provide reproductive health services. Accordingly, the FACE Act is content neutral because it also protects facilities counseling alternatives to abortion.<sup>16</sup> Nevertheless, since the statute's enactment in 1994, various organizations and individuals have unsuccessfully challenged the constitutionality of the FACE Act's restrictions on their anti-abortion efforts. The primary thrust of these challenges is that the statute violates free speech and free exercise rights. Because the plain language of the statute is content neutral,

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<sup>13</sup> See S. REP. NO. 103-117, at 3 (1993); *see also* *United States v. Dinwiddie*, 76 F.3d 913, 919 (8th Cir. 1996) (The “FACE Act’s protection of [reproductive health care facilities] and [their] staff and patients is a valid exercise of Congress’s power to protect people and businesses involved in interstate commerce”).

<sup>14</sup> 18 U.S.C. § 248(a)(1). Although the FACE Act also has provisions for criminal conduct that affects a victim lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship, 18 U.S.C. § 248(a)(2), or damages/destroys the property of a place of religious worship, 18 U.S.C. § 248(a)(3), such incidents are better addressed by using 18 U.S.C. § 247, which includes an interstate commerce jurisdictional hook to ensure its constitutionality.

<sup>15</sup> 18 U.S.C. § 248(a)(3).

<sup>16</sup> *See, e.g.*, *United States v. Weslin*, 156 F.3d 292, 296–97 (2d Cir. 1998); *United States v. Wilson*, 154 F.3d 658, 663 (7th Cir. 1998) (“The Act punishes anyone who engages in the prohibited conduct, irrespective of the person’s viewpoint and does not target any message based on content. ‘The Access Act thus does not play favorites: it protects from violent or obstructive activity not only abortion clinics, but facilities providing pre-pregnancy and pregnancy counseling services, as well as facilities counseling alternatives to abortion.’”) (citation omitted).

however, courts have routinely denied these constitutional challenges.<sup>17</sup>

Importantly, the FACE Act provides both a federal criminal and federal civil cause of action. Only the U.S. Department of Justice can prosecute a criminal FACE Act case. But more actors can file a civil FACE Act case, including the Department of Justice, state attorneys general, and private persons involved in providing or obtaining reproductive healthcare services. There are two important differences between a criminal FACE Act prosecution and a civil FACE Act suit: the burden of proof and the available remedies.

## **B. Elements**

The elements of a criminal and civil FACE Act violation are the same. However, a criminal FACE Act prosecution requires proof beyond a reasonable doubt, whereas a civil cause of action only requires proof by preponderate evidence.

The FACE Act has two separate intent elements: first, the defendant must act with the intent to injure, intimidate, or interfere; the second requires that the defendant act because the victim was seeking, obtaining, providing, had obtained, had provided, might obtain, or might provide reproductive health services.<sup>18</sup> Because of this dual-intent requirement, the linchpin to a successful FACE Act prosecution is motivation. Evidence showing a defendant's motivation is often gleaned from statements the defendant made before and after the offense conduct. With incidents involving online threats, it is important for investigators to have threat recipients print or save the defendant's threatening communication, including headers and footers; screenshots; and any other digital evidence with evidentiary value.

A FACE Act defendant will often admit motive during post-incident interviews. Additionally, prosecutors can uncover motivation evidence from leaflets, pamphlets, and signs that a defendant possessed at the time of the incident. Video footage, photos, and comments posted on social media accounts have also been routinely used in prosecutions to prove intent. Other less obvious sources of FACE Act intent and

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<sup>17</sup> *Weslin*, 156 F.3d at 296–97; *Wilson*, 154 F.3d at 663; *see also Dinwiddie*, 76 F.3d at 923.

<sup>18</sup> *See Sharpe v. Conole*, 386 F.3d 482, 484 (2d Cir. 2004).

motive evidence can come from 911 calls, a witness's prior interactions with a defendant, and even a defendant's bumper stickers.

The two subsections of the FACE Act that are used to prosecute anti-abortion crimes are 18 U.S.C. § 248(a)(1), involving force, threat of force, or physical obstruction; and 18 U.S.C. § 248(a)(3), involving damage or destruction of clinic property. The FACE Act's statutory definitions for terms such as "interfere with," "intimidate," and "physical obstruction" will impact how prosecutors should assess whether conduct amounts to a FACE Act violation.<sup>19</sup>

Below is a discussion of the elements<sup>20</sup> of a FACE Act prosecution under subsections (a)(1) and (a)(3) and case examples from prosecutions by the Department of Justice.

### 1. Section 248(a)(1)

Under 18 U.S.C. § 248(a)(1), the prosecution must prove that the defendant (1) used force, threat of force, or physical obstruction; (2) acted with the intent to injure, intimidate, or interfere with a person; and (3) did so knowingly and because a person was, or had been, providing or obtaining reproductive health services. To make the criminal violation a felony, the prosecution must also prove (1) that the defendant's acts resulted in bodily injury or death, or (2) that the defendant has a prior conviction under 18 U.S.C. § 248(a).

#### *Use of force*

"Force" has been broadly defined as "power, violence, or pressure directed against a person or thing."<sup>21</sup> As applied in FACE Act prosecutions, the term "force" is not limited to intentional acts that result in bodily injury.<sup>22</sup> Therefore, use of force can include incidents involving kidnappings, as well as assaultive force, such as shootings and murder, so long as the "force" used was for the purpose of injuring, intimidating, or interfering (or attempting to do the same) with any person seeking or providing reproductive health services.

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<sup>19</sup> See 18 U.S.C. § 248(e).

<sup>20</sup> *E.g.*, ELEVENTH CIRCUIT PATTERN CRIMINAL JURY INSTRUCTIONS No. O10.1, O10.2 (2021); *Conole*, 386 F.3d at 484.

<sup>21</sup> *Dickson v. Ashcroft*, 346 F.3d 44, 50 (2d Cir. 2003).

<sup>22</sup> *State of New York v. Cain*, 418 F.Supp.2d 457, 473 (S.D.N.Y. 2006) ("There is no exception for fleeting and *de minimis* contact . . . (assuming, of course, that the fleeting use of force was intentional)").

The Department of Justice has criminally charged many “use of force” cases under the FACE Act. In *United States v. Kopp* (discussed above), the defendant was convicted of a death-resulting FACE Act violation and sentenced to life imprisonment after he shot and killed a doctor in his home<sup>23</sup> because he performed abortion procedures.<sup>24</sup>

In *United States v. Dear*, the defendant was indicted in 2019 in the District of Colorado for his FACE Act crimes related to the 2015 shooting at a Planned Parenthood clinic in Colorado Springs.<sup>25</sup> The defendant in that case is alleged to have traveled to the clinic with the intent to “wage ‘war’” because the clinic offered reproductive health services. He shot at several civilians and police officers, killing three people and injuring several others.<sup>26</sup>

And, in *United States v. Keiser*,<sup>27</sup> the defendant pleaded guilty to violating the FACE Act for, among other violations, physically assaulting a staff member who attempted to restrain the defendant until police arrived.<sup>28</sup>

### *Threats of force*

The FACE Act also criminalizes threats. The FACE Act’s proscription on “threats of force” is limited to “true threats” that “place a person in reasonable apprehension of bodily injury” and, thus, are not protected by the First Amendment.<sup>29</sup>

To establish a true threat, the prosecution must show that a defendant transmitted the communication “for the purpose of issuing a threat, or with knowledge that the communication will be viewed as

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<sup>23</sup> FACE Act offenses—whether involving the use of force, threat of force, or physical obstruction—are not limited to occurrences on reproductive healthcare facility grounds (that is, within a facility or in the facility parking lot); *see also, e.g.*, *United States v. Soderna*, 82 F.3d 1370, 1375 (7th Cir. 1996) (“A group of demonstrators could not insist upon the right to cordon off a street . . . and allow no one to pass who did not agree to listen to their exhortations.”).

<sup>24</sup> *Kopp II*, 562 F.3d at 144.

<sup>25</sup> No. 19-cr-506 (D. Co Sept. 16, 2021).

<sup>26</sup> *Id.*

<sup>27</sup> No. 08-cr-04035 (W.D. Mo. Feb. 23, 2010).

<sup>28</sup> *See Information, Keiser*, No. 08-cr-0435, ECF No. 1.

<sup>29</sup> “Threats of force” prosecuted under the FACE Act are often also chargeable under other federal statutes.

a threat.”<sup>30</sup> Threats of force are not limited to written or spoken words; the communication can be nonverbal.<sup>31</sup>

The Department of Justice has brought numerous FACE Act cases involving threats of force. In *United States v. Hart*, for example, the defendant was found guilty of violating the FACE Act for parking Ryder rental trucks at the entrances of two Little Rock, Arkansas, area abortion clinics in 1997.<sup>32</sup> The placement of the trucks coincided with a visit to Little Rock from then-President Clinton and was approximately two years after the well-known events of the Oklahoma City bombing, which involved a Ryder truck packed with explosives.<sup>33</sup> Combined with other evidence, these circumstances were reasonably interpreted as a threat to injure, and a jury convicted the defendant of violating the FACE Act for the threatened use of force.<sup>34</sup>

In *United States v. Waagner*,<sup>35</sup> a defendant was convicted on multiple FACE Act counts and other federal offenses for threatening employees of reproductive healthcare clinics with a biological agent. The defendant first posted a death threat on the extremist “Army of God” website, stating that he was going to escalate the war on abortionists. The defendant subsequently sent hundreds of letters to abortion clinics throughout the United States that contained an unidentified powder purported to be anthrax, which were sent on the heels of other letters he mailed to Florida, Washington, D.C., and New Jersey that contained anthrax spores. Although none of the letters sent to the clinics actually contained anthrax, the associated costs were enormous, including disruptions to clinic operations, the use of expansive law enforcement resources, and meticulous decontamination procedures for clinic staff, patients, mail carriers, etc.

Private parties have also filed civil FACE Act suits for the threatened use of force. For example, in *Planned Parenthood of*

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<sup>30</sup> *Elonis v. United States*, 575 U.S. 723, 739–41 (2015).

<sup>31</sup> For a detailed discussion about prosecuting “true threats,” including suggestions on how to question subjects to elicit useful statements regarding their intent and other federal statutes that can be charged, please see Kathryn E. Gilbert, *Prosecuting Hate Crime Threats*, 70 DOJ J. FED. L. & PRAC. no. 2, 2022, at 239.

<sup>32</sup> 212 F.3d 1067 (8th Cir. 2000).

<sup>33</sup> *Id.* at 1072.

<sup>34</sup> *Id.*

<sup>35</sup> No. 02-cr-582 (E.D. Pa July 22, 2005).

*Columbia/Willamette, Inc. v. American Coalition of Life Activists*, which was a FACE Act case brought by Planned Parenthood under 18 U.S.C. § 248(c)(1)(A), the defendants were found to have violated the statute by targeting abortion physicians with threats on a series of posters.<sup>36</sup> The posters identified the physicians by photographs, names, and addresses, along with the captions “the Deadly Dozen,” “GUILTY,” and the “Nuremberg Files.”<sup>37</sup> The posters were circulated in the wake of a series of “WANTED” and “unWANTED” posters that identified other doctors who performed abortions before they were murdered.<sup>38</sup> After an appeal, the Ninth Circuit held that, although the posters did not contain an explicit threat on their face, with context, the defendants were aware that the posters would be interpreted as a serious threat of death or bodily harm by the named abortion physicians.<sup>39</sup>

### *Physical obstruction*

To prove a defendant used a physical obstruction in violation of the FACE Act, the evidence must establish that the obstructive act rendered passage to or from the facility “unreasonably difficult.”<sup>40</sup> Courts have taken a broad view of what constitutes a physical obstruction, and the prosecution need not prove that the obstruction rendered access to the facility impassable.<sup>41</sup> Nevertheless, it is important to note that the statute does require some type of physical obstruction.<sup>42</sup> Merely making the approach to health facilities “unpleasant and even emotionally difficult does not” constitute physical obstruction.<sup>43</sup>

Courts have held that the following acts of physical obstruction are sufficient to establish a FACE Act violation: obstructing or slowing access to driveways or parking lots; standing in front of pedestrians as they try to enter a clinic; blocking clinic doors by standing directly in

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<sup>36</sup> 290 F.3d 1058, 1062 (9th Cir. 2002).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1063–64.

<sup>39</sup> *Id.* at 1079.

<sup>40</sup> *United States v. Mahoney*, 247 F.3d 279, 284 (D.C. Cir. 2001).

<sup>41</sup> *Id.*

<sup>42</sup> *See State of New York v. Operation Rescue Nat’l*, 273 F.3d 184, 195 (2d. Cir. 2001) (criticizing “constructive obstruction” as “an uncertain and potentially slippery concept”).

<sup>43</sup> *Id.* at 195–196.

front of them; blocking patients inside automobiles by standing close to car doors; and participating in a demonstration so close to a clinic entrance that patients are compelled to use an alternate entrance.<sup>44</sup>

In *United States v. Soderna*, the Department of Justice convicted six defendants under the FACE Act for creating a physical obstruction by blocking the entrances to a Milwaukee abortion clinic using a disabled automobile, a large drum filled with concrete and steel, and their bodies.<sup>45</sup> Although the defendants' conduct was nonviolent, it violated the FACE Act because it physically impeded entry to the facility.<sup>46</sup>

Similarly, in *United States v. Dugan*, a defendant was convicted of violating the FACE Act for kneeling in front of a New York City Planned Parenthood clinic door, blocking the entrance, and refusing to move.<sup>47</sup> Coupled with statements that the defendant made indicating that it was his duty to “interven[e] against the slaughter of our unborn citizens,” the evidence established that his blockade was to prevent access to the facility.<sup>48</sup>

### *“Providers” of reproductive health services*

Victims of section 248(a)(1) violations are persons seeking to obtain or provide reproductive health services. As it pertains to “providers,” courts have taken a broad view of who “provides” reproductive health services, and prosecutable incidents of violence under the FACE Act are not limited to conduct directed toward medical personnel. Clinic employees, patient escorts, and volunteers are “providers” of reproductive health services for purposes of the FACE Act.<sup>49</sup>

For example, in *United States v. Dinwiddie*, the defendant was charged with FACE Act offenses that included a count for assaulting a maintenance supervisor at a Planned Parenthood clinic with an electric bullhorn.<sup>50</sup> The defendant argued she did not violate the FACE Act because the victim was not “providing reproductive health services.”<sup>51</sup> In holding that the FACE Act applied to all workers at the

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<sup>44</sup> *Id.*; *Mahoney*, 247 F.3d at 284.

<sup>45</sup> 82 F.3d 1370, 1373 (7th Cir. 1996).

<sup>46</sup> *Id.* at 1375.

<sup>47</sup> 450 Fed. App'x 20, 22 (2d Cir. 2011) (not precedential).

<sup>48</sup> *Id.*

<sup>49</sup> *See, e.g.*, *United States v. Hill*, 893 F. Supp. 1034 (N.D. Fla. 1994); *Greenhut v. Hand*, 996 F. Supp. 372 (D.N.J. 1998).

<sup>50</sup> 76 F.3d at 926.

<sup>51</sup> *Id.*

clinic, the Eighth Circuit reasoned that physicians who perform abortions could not do so without the facility or its workers and that “workers at an abortion clinic . . . ‘provide[]’ reproductive-health services” much like “[a] building that houses an abortion clinic ‘provides’ reproductive-health services.”<sup>52</sup>

## 2. Section 248(a)(3)

In addition to criminalizing conduct directed toward any individuals exercising their reproductive healthcare rights, the FACE Act also prohibits damaging or destroying the property of a facility because it provides reproductive health services.<sup>53</sup>

Under 18 U.S.C. § 248(a)(3), the prosecution must prove that the defendant (1) intentionally damaged or destroyed the property of a facility and (2) did so knowingly and because the facility was being used to provide reproductive health services. To make the criminal violation a felony, the prosecution must also prove (1) that the defendant’s acts resulted in bodily injury or death or (2) that the defendant had a prior conviction under section 248(a).

Criminal prosecutions brought by the Department of Justice under this provision of the FACE Act have included damage or destruction caused by fire or arson. Since 2019, the Department has brought several FACE Act cases charging defendants with causing damage to reproductive healthcare clinics for throwing Molotov cocktails at the facilities.<sup>54</sup>

Additionally, the Department of Justice has charged acts of damage or destruction for spray-painted graffiti when the damage was motivated by the clinic’s status as a reproductive healthcare facility. In *United States v. Miller* and *United States v. Reynolds*,<sup>55</sup> two

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<sup>52</sup> *Id.*

<sup>53</sup> 18 U.S.C. § 248(a)(3).

<sup>54</sup> *See, e.g.*, *United States v. Kaster*, No. 19-cr-4031 (W.D. Mo. Sept. 9, 2020); *United States v. Gullick*, No. 21-cr-01 (D. Del. Feb. 11, 2021); *United States v. Little*, No. 21-cr-40 (M.D. Fla. Oct. 13, 2021). A Molotov cocktail is “[a] makeshift incendiary device for throwing by hand, consisting of a bottle or other breakable container filled with flammable liquid and with a piece of cloth, etc., as a fuse.” *Molotov*, OXFORD ENG. DICTIONARY, <https://www.oed.com/view/Entry/120965?redirectedFrom=molotov+cocktail#eid36199995> (last visited Feb. 4, 2022).

<sup>55</sup> *United States v. Miller*, No. 16-cr-520 (D. Md. Mar. 6, 2017); *United States v. Reynolds*, No. 16-cr-490 (D. Md. Feb. 24, 2017).

defendants were convicted of FACE Act violations for vandalizing the exterior walls of a Baltimore, Maryland, area abortion clinic with spray-painted graffiti that included the words “baby killer,” “kill baby here,” and “kill dead babby [sic].”

FACE Act convictions have been obtained even when the vandalism didn’t explicitly express an anti-abortion intent. In *United States v. Curell*,<sup>56</sup> the defendant broke into a Bloomington, Indiana, Planned Parenthood clinic and caused extensive damage to the clinic’s medical and computer equipment. In that case, the defendant admitted that his goal was to shut the clinic down because it provided abortion services.

The FACE Act applies regardless of what viewpoint any damage or vandalism expresses, so long as the damage or destruction caused was because the facility provides reproductive health services.<sup>57</sup> Subsection 248(a)(3) applies, for example, to a subject who spray paints the words “keep abortion legal” on a facility providing counseling regarding abortion alternatives, as well as to a subject who spray paints the words “death camp” on a facility providing abortion services.<sup>58</sup> The cost of repair or loss caused by the damage or destruction has no bearing on the penalties.

## C. Penalties

### 1. Criminal

The circumstances of the charged conduct determine whether a criminal FACE Act charge is a misdemeanor or a felony offense. For the first offense, the available penalty is imprisonment for not more than one year, fines up to \$10,000, or both.<sup>59</sup> For a second offense, imprisonment of no more than three years, a fine up to \$25,000, or both may be imposed.<sup>60</sup> If bodily injury occurs, the statute provides for imprisonment for not more than 10 years, fines up to \$25,000, or both; and if death results, the FACE Act provides for imprisonment for any

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<sup>56</sup> No. 14-cr-98 (S.D. Ind. July 2, 2014).

<sup>57</sup> 18 U.S.C. § 248(a)(3).

<sup>58</sup> *Riely v. Reno*, 860 F. Supp. 693, 702 (D. Ariz. 1994).

<sup>59</sup> 18 U.S.C. § 248(b) (For an offense involving exclusively a nonviolent physical obstruction, the available penalty is up to six months’ imprisonment for the first offense and up to 18 months’ imprisonment for any subsequent offense).

<sup>60</sup> *Id.*

term of years or for life.<sup>61</sup> It is important for federal prosecutors to note that the FACE Act does not provide enhanced penalties in cases involving the use or threatened use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, although, as discussed below, there are other federal statutes that may address such conduct, depending on the underlying facts.

## 2. Civil

In a civil action brought by a private person involved in providing or obtaining services at a reproductive healthcare facility, the court has the authority to award appropriate relief, including temporary, preliminary, or permanent injunctive relief, and compensatory and punitive damages, as well as reasonable court fees.<sup>62</sup> A private plaintiff may also elect to recover statutory damages in the amount of \$5,000 per statutory violation.<sup>63</sup> In civil actions brought by the Department of Justice or state attorneys general, the court may similarly award relief and, additionally, assess civil penalties of up to “\$10,000 for a nonviolent physical obstruction and \$15,000 for other first violations” and up to “\$15,000 for a nonviolent physical obstruction and \$25,000 for any other subsequent violation” to vindicate the public interest.<sup>64</sup> For example, in 2017, the Department of Justice filed a civil FACE Act suit against 10 defendants for creating a physical obstruction at a Louisville, Kentucky, area abortion clinic.<sup>65</sup> The case was settled, and the court awarded the United States monetary damages and temporary injunctive relief.<sup>66</sup> The defendants were ordered to pay damages up to \$3000, to not enter a “buffer zone” around the clinic, and to not enter the facility for of up to three years.<sup>67</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> 18 U.S.C. § 248(c)(1)(B).

<sup>63</sup> *Id.*

<sup>64</sup> 18 U.S.C. §§ 248(c)(2)(B), (3)(B).

<sup>65</sup> *United States v. Thomas*, No. 17-cv-432 (W.D. Ky Sept. 27, 2021).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

## IV. Other applicable federal statutes

As mentioned above, conduct that constitutes a FACE Act offense may also be chargeable under other federal statutes. Unless bodily injury or death results, the FACE Act does not have felony penalties for (1) offenses involving the use of fire, firearms, dangerous weapons, explosives, or incendiary devices or (2) offenses involving kidnapping, attempted kidnapping, or attempting to kill. Because other applicable statutes may provide stronger penalties, prosecutors should consider charging other federal offenses in addition to FACE Act violations. Some of those other applicable federal offenses include the following:

### A. Conspiracy against rights—18 U.S.C. § 241

FACE Act violations are often planned and coordinated offenses that involve more than one subject. In those situations, the investigations may reveal evidence that support conspiracy charges in addition to the underlying offense. Although criminal conspiracy offenses are usually charged under 18 U.S.C. § 371, a conspiracy to commit a FACE Act offense should be charged under 18 U.S.C. § 241—conspiracy against rights. Section 241 makes it a crime for:

two or more persons . . . to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same.<sup>68</sup>

The right to seek civil redress under 18 U.S.C. § 248(c) establishes the right to seek, obtain, and provide reproductive health care without interference by force, threat of force, or physical obstruction.

Therefore, an agreement by two or more persons to injure, oppress, threaten, or intimidate anyone who is seeking, obtaining, or providing reproductive health services is a cognizable violation of section 241.

There are three advantages to charging a section 241 conspiracy when the evidence supports it. First, unlike a section 371 conspiracy, a section 241 conspiracy conviction is always a felony, even when the underlying substantive violation would be a misdemeanor. Second, section 241 violations are punishable by up to 10 years' imprisonment; or up to life or the death penalty, if certain aggravators apply. And

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<sup>68</sup> 18 U.S.C. § 241.

third, under section 241, the government is not required to prove an overt act or substantial step in furtherance of the agreement.<sup>69</sup>

### **B. Damage or destruction of property used in interstate commerce—18 U.S.C. § 844(i)**

Section 844(i) establishes a federal criminal offense for an individual who “maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce.” Since many reproductive health services clinics serve patients from other states and order medical supplies from other states, clinics may constitute property used in interstate commerce. Charges under section 844(i) frequently have been brought in cases of arson or bombing of reproductive health services clinics. The charge carries a penalty of 5 to 20 years, absent physical injury, and 7 to 40 years if injury results. When death results from a violation of this statute, the offender is eligible for the federal death penalty. For example, in *United States v. Grady*,<sup>70</sup> the defendant was convicted of arson and a FACE Act offense for setting fire to a Planned Parenthood facility by breaking a clinic window and igniting gasoline he poured onto the floor. The defendant was sentenced to 11 years’ imprisonment.<sup>71</sup>

### **C. Use of fire or explosive in the commission of a felony offense—18 U.S.C. § 844(h)**

Section 844(h) provides an enhanced penalty for any federal felony offense that was committed with the use of fire or an explosive. The first offense requires a 10-year sentence. A second offense under this subsection imposes a mandatory minimum 20-year sentence. These sentences must be consecutive to any other sentence and are not probation eligible. This would apply in cases involving an underlying felony FACE Act violation (that is, one that resulted in bodily injury, death, or when the defendant had a prior FACE Act conviction and committed a subsequent FACE Act offense using fire or an explosive).

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<sup>69</sup> See, e.g., *United States v. Colvin*, 353 F.3d 569, 576 (7th Cir. 2003) (en banc) (stating that a “§ 241 does not specify an overt-act requirement”); *United States v. Whitney*, 229 F.3d 1296, 1301 (10th Cir. 2000) (same).

<sup>70</sup> No. 12-cr-77 (E.D. Wis. Feb. 20, 2013).

<sup>71</sup> Judgment, *Grady*, No. 12-cr-77, ECF No. 81.

#### **D. Use of the mail or commerce for bomb or fire threats—18 U.S.C. § 844(e)**

Section 844(e) proscribes the use of the U.S. Mail, phone, or other instrument of interstate commerce to communicate a threat or to convey false information concerning a threat. Cases brought under section 844(e) often involve bomb or arson threats. This offense carries a penalty of up to 10 years' imprisonment. For example, in *United States v. Allen*, the defendant was charged with violating the FACE Act and section 844(e) for making a telephonic bomb threat to a Jacksonville, Florida, area abortion clinic.<sup>72</sup> The defendant pleaded guilty to the federal offenses and was sentenced to 24 months' imprisonment.<sup>73</sup>

#### **E. Threats made by use of interstate or foreign commerce—18 U.S.C. §§ 875, 876**

These statutes prohibit the use of interstate or foreign commerce—generally telephones, computers, and the mail—to convey threats to kidnap or injure another. Increased penalties apply when the threat is made with the intent to extort a “thing of value.”<sup>74</sup> Many FACE Act prosecutions involving threatening interstate communications have charged section 875(c) in cases involving the use of the internet or a telephone as a means to communicate the “true threat.” Violations of these statutes are felony offenses. In *United States v. Terry*,<sup>75</sup> the defendant was convicted of FACE Act and section 875(c) offenses for directing a threatening social media post at a St. Louis, Missouri, area Planned Parenthood clinic.<sup>76</sup> The defendant was sentenced to six months' imprisonment.<sup>77</sup>

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<sup>72</sup> Criminal Complaint, *United States v. Allen*, No. 19-cr-186 (M.D. Fl. Sept. 23, 2019), ECF No. 1.

<sup>73</sup> The defendant pled guilty to an 18 U.S.C. § 1001 offense and a FACE Act offense. See Plea Agreement, *Allen*, No. 19-cr-186, ECF No. 50.

<sup>74</sup> 18 U.S.C. §§ 875, 876.

<sup>75</sup> No. 19-cr-279 (E.D. Mo. Aug. 23, 2019).

<sup>76</sup> Judgment, *Terry*, No. 19-cr-279, ECF No. 26.

<sup>77</sup> *Id.*

## **F. Use of weapons of mass destruction— 18 U.S.C. § 2332a**

Section 2332a prohibits the use, threatened use, attempted use, or conspired use of a weapon of mass destruction, which includes toxins, biological agents, or vectors, against any person within the United States that affects interstate commerce. The term “weapon of mass destruction” is defined under this section and includes any destructive device defined under 18 U.S.C. § 921; any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any weapon involving a disease organism; or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life. Use or threatened use of a chemical weapon is covered under 18 U.S.C. § 229. The offender is eligible to be sentenced to any term of years, to life, or in certain cases, to death. For example, in *United States v. Evans*,<sup>78</sup> the defendant pleaded guilty to violating section 2332a for planting an explosive device, which did not detonate, at an Austin, Texas, area abortion clinic. The defendant was sentenced to 480 months’ imprisonment.<sup>79</sup>

## **V. Collaboration with federal partners**

### **A. The National Task Force on Violence Against Reproductive Health Care Providers**

The National Task Force on Violence Against Reproductive Health Care Providers coordinates the efforts of federal authorities in the investigation and prosecution of acts of anti-abortion violence. The Task Force is led by the Assistant Attorney General for the Civil Rights Division and is comprised of prosecutors from the Civil Rights and Criminal Divisions, as well as investigators and analysts from the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the U.S. Postal Inspection Service. The U.S. Marshall’s Service is also a key member and contributor to the Task Force, particularly because it is tasked with providing site security and protection services for reproductive healthcare providers.

In addition to federal coordination, the Task Force serves as a clearinghouse for information relating to acts of violence against

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<sup>78</sup> No. 07-cr-98 (W.D. Tex. Oct. 25, 2007).

<sup>79</sup> *Judgment, Evans*, No. 07-cr-98, ECF No. 38.

abortion providers and collects and coordinates data identifying national trends related to clinic violence. The Task Force also coordinates with many non-governmental organizations (NGOs) that provide security and other services to reproductive healthcare facilities. These NGOs relationships are important to foster particularly because NGOs often provide real-time notification of potential FACE Act incidents, which can be of significant investigative importance.

The Task Force's other functions include assisting U.S. Attorneys' local working groups involved in the investigation and prosecution of clinic violence, including providing training and outreach to federal, state, and local law enforcement partners. The Task Force also provides technical assistance and outreach to local clinic personnel, designed to enhance the safety and protection of providers. Lastly, the Task Force supports federal civil investigation and litigation of abortion-related violence.

## **B. Required consultation with the Civil Rights Division's Criminal Section**

After the 2009 murder of Dr. George Tiller—a Kansas reproductive healthcare physician—by an anti-abortion extremist, the Department of Justice sought to further coordinate the federal response to the investigation and prosecution of incidents of violence targeting reproductive healthcare providers. Today, U.S. Attorneys must

consult with the Criminal Section before making any charging decisions regarding abortion-related violations in their districts.<sup>80</sup> Also, if there are any legal challenges to the FACE Act, the Criminal Section must be consulted.<sup>81</sup>

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<sup>80</sup> Many criminal activities that affect reproductive healthcare providers constitute crimes at the federal, state, and local level. Many jurisdictions have local ordinances for trespassing, disorderly conduct, and stalking, for example, that may overlap with coverage of that same conduct by the FACE Act. Because FACE Act violations implicate strong federal interests, charging decisions usually weigh in favor of federal prosecution.

<sup>81</sup> Unlike other criminal civil rights statutes, a FACE Act prosecution does not require prior certification by the U.S. Attorney General or a designee. *See, e.g.*, 18 U.S.C. §§ 245, 247, 249.

## VI. Resource

U.S. Attorneys and the Civil Rights Division share responsibility for enforcing the FACE Act. Cooperation between the two communities will ensure a vigorous enforcement program. Additional information about the Civil Rights Division and its criminal and civil FACE Act enforcement programs can be found on its website.<sup>82</sup> Information about the National Task Force on Violence Against Reproductive Health Care Providers and law enforcement point-of-contact information can be found on [justice.gov](https://www.justice.gov).<sup>83</sup>

### About the Author

**Sanjay Patel** is a trial attorney in the Civil Rights Division's Criminal Section. Mr. Patel has been with the Criminal Section since 2011 and has extensive criminal civil rights investigation and prosecution experience, which includes FACE Act prosecutions. He has also served as the Director of the Task Force on Violence Against Reproductive Health Care Providers. Before joining the Department of Justice, Mr. Patel was a local prosecutor with the Cook County, Illinois, State's Attorney's Office and section 1983 defense counsel for the City of Chicago's Law Department. Mr. Patel received his J.D. from Michigan State University in 2000.

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<sup>82</sup> *Civil Rights Division*, DEPT OF JUST., <https://www.justice.gov/crt> (last visited Feb. 4, 2022).

<sup>83</sup> *National Task Force on Violence Against Reproductive Health Care Providers*, DEPT OF JUST., <https://www.justice.gov/crt/national-task-force-violence-against-reproductive-health-care-providers> (updated Sept. 17, 2021).

Paul Vaughn Statement before the Subcommittee on the  
Constitution and Limited Government of the Committee on the Judiciary  
Revisiting the Implications of the FACE Act: Part 2

# Exhibit 6

Kristen Clarke

Ideologically Anti-God and Pro-Choice

From KC Twitter: Dec 10, 2018

Meet Kerri Kupec, the new head of Public Affairs at DOJ.

She works for Alliance Defending Freedom (anti-LGBTQ hate group) & grad of Jerry Falwell's law school, a fundamentalist Christian school that wants to 'remake the US in the Religious Right's image.'

twitter.com/kristenclarkej/status/1072168061581623301

← Tweet

 **Kristen Clarke**   
@KristenClarkeJD

Meet Kerri Kupec, the new head of Public Affairs at DOJ.

She works for Alliance Defending Freedom (anti-LGBTQ hate group) & grad of Jerry Falwell's law school, a fundamentalist Christian school that wants to 'remake the US in the Religious Right's image.'

 dailykos.com  
New DOJ hire has Jerry Falwell-signed law degree, defende...  
A top job in the Department of Justice may seem out of reach for a graduate of a bottom-tier law school, but if that botto...

10:38 AM · Dec 10, 2018

<https://twitter.com/KristenClarkeJD/status/1219973488154423298>



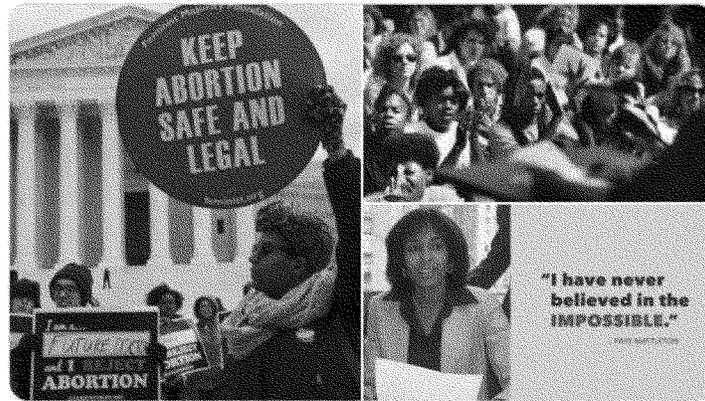
Kristen Clarke  
@KristenClarkeJD



Today marks the 47th anniversary of the Supreme Court's #RoeWade ruling.

77% of Americans don't want Roe overturned. But hostile lawmakers are passing laws that seek to turn the clock back.

We must redouble our efforts to fight for reproductive freedom and reproductive justice.



7:22 AM - Jan 22, 2020

632 Retweets 30 Quote Tweets 1,293 Likes

<https://twitter.com/KristenClarkeJD/status/1129001200718893057>



**Kristen Clarke**   
@KristenClarkeJD



**BREAKING: Missouri Senate just passed an 8 week abortion ban (24-0). No exceptions for rape or incest. Bill moves to the Senate; Governor has indicated he will sign.**

A coordinated attack on Roe v Wade and women's reproductive freedom is well underway.  
[#AbortionIsAWomansRight](#)



**The Boston Globe** @BostonGlobe · May 16, 2019

Missouri Senate passes bill to ban abortions at 8 weeks [bos.gl/XuyawYK](https://bos.gl/XuyawYK)

7:30 AM · May 16, 2019

5,796 Retweets 831 Quote Tweets 7,302 Likes



Tip



Tweet your reply

Reply



**Kristen Clarke** @KristenClarkeJD · May 16, 2019

Replying to @KristenClarkeJD

typo: vote was 24-10. Still 24 lawmakers too many.



7

43

210



Tip

<https://twitter.com/KristenClarkeJD/status/1220005500152053760>

 **Kristen Clarke**   
@KristenClarkeJD

You can find a link to the Justice Department's draconian anti-abortion brief involving Ohio's abortion ban law here.

Make no mistake, this administration is bent on gutting #RoeyWade.



justice.gov  
Department of Justice Files Brief In Support of the Constitu...  
The Department of Justice today filed a friend-of-the-court brief with the full United States Court of Appeals for the ...

9:29 AM · Jan 22, 2020

6 Retweets 2 Quote Tweets 6 Likes

     Tip

<https://www.justice.gov/opa/pr/departement-justice-files-brief-support-constitutionality-ohio-law-prohibiting-abortion>

"The Department of Justice today filed a friend-of-the-court brief with the full United States Court of Appeals for the Sixth Circuit, in support of the constitutionality of an Ohio law prohibiting abortion providers from performing an abortion they know is sought because of Down syndrome."

<https://www.cruz.senate.gov/newsroom/press-releases/sen-cruz-clarke-is-completely-unfit-to-serve>

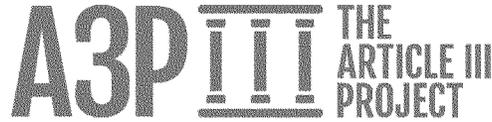


"Kristen Clarke is one of the most radical nominees ever put forward for any position in the federal government, and today Democrats have voted to give her a top position at the Department of Justice. Let me be clear: Kristen Clarke is completely unfit to serve as Assistant Attorney General for the Civil Rights Division. Not only has she made her disgust for law enforcement clear by her repeated calls to defund the police, she has a history of not only excusing, but celebrating criminals who have murdered police officers. What are police officers across the country supposed to think about Democrats elevating someone to a senior position at the Department of Justice knowing that she has celebrated a brutal cop killer?"

"The Department of Justice has a long history of being apolitical, of exercising fidelity to the law, of not using the law as a partisan weapon to target enemies of whatever administration is in power. The Obama-Biden administration corrupted that practice, and now the Biden-Harris administration is continuing that pattern. I believe appointees to the Department of Justice should have a demonstrated record of fidelity to the law, impartiality, and the ability to defend the law. Kristen Clarke does not."

Paul Vaughn Statement before the Subcommittee on the  
Constitution and Limited Government of the Committee on the Judiciary  
Revisiting the Implications of the FACE Act: Part 2

# Exhibit 7



June 24, 2024

The Honorable Merrick Garland  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Re: Criminal Referral Against Kristen Clarke,  
Assistant Attorney General for Civil Rights

Dear Mr. Attorney General:

More than seven weeks ago, you received serious and credible evidence that Kristen Clarke—President Biden’s and your Assistant Attorney General for Civil Rights—perjured herself at her Senate confirmation hearing back in 2021 when she lied to the Senate about her arrest for a violent domestic dispute. Unsurprisingly, given your track record of leading a politicized and weaponized Biden Justice Department that goes after political enemies and protects political friends, more than seven weeks has passed and you have done nothing publicly to address this serious matter. The Biden White House and Justice Department pretend “nobody is above the law”—while ensuring Kristen Clarke is clearly above it. Thus, I write to refer this matter for criminal prosecution.

Prior to assuming her current senior political appointment in the Biden Justice Department, Kristen Clarke, like every other nominee who requires confirmation by the United States Senate, answered a series of questions under oath in written and oral form. Kristen Clarke knowingly and willfully provided a false answer to one of these questions, which constitutes the basis for this criminal referral on two grounds: (1) a violation of Title 18, United States Code, § 1001(a)(2) (knowingly and willfully making materially false statements); and (2) a violation of Title 18, United States Code, § 1621(1) (perjury).

A news report from *The Daily Signal*<sup>1</sup> explains clearly how Kristen Clarke lied to Congress and perjured herself during her Senate confirmation hearing. In 2006, Kristen Clarke and her husband Reginald Avery lived in Upper Marlboro, Maryland. On the night of July 4, Kristen Clarke and Avery engaged in a vicious argument after Kristen Clarke had discovered that Avery had been unfaithful. According to Avery, Kristen Clarke attacked him with a knife and caused injuries so severe that Avery required emergency-room care. Avery claims that the injuries were so serious that his finger was cut to the bone. Prince George’s County authorities arrested Kristen Clarke on the night of the incident. *The Daily Signal* reviewed police logs and

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<sup>1</sup> Mary Margaret Olohan, *Exclusive: DOJ’s Kristen Clarke Testified She Was Never Arrested. Court Records and Text Messages Indicate She Was*, *The Daily Signal*, April 30, 2024, available at <https://www.dailysignal.com/2024/04/30/exclusive-doj-kristen-clarke-testified-she-was-never-arrested-court-records-and-text-messages-indicate-she-was/> (last visited June 24, 2024).



court records to confirm that the arrest had occurred. In January 2008, the Maryland District Court for Prince George’s County expunged the record of the arrest.

On April 21, 2021, after her testimony before the Senate Judiciary Committee, Kristen Clarke answered under oath and penalty of perjury a series of written questions from senators. Senator Tom Cotton asked the question pertinent to this referral: “Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?”<sup>2</sup>

Kristen Clarke’s response was unambiguous: “No.”

After *The Daily Signal* published its report, Kristen Clarke released a statement to CNN. In it, Kristen Clarke claimed to have been a victim of years-long domestic abuse by Avery that had traumatized her. Kristen Clarke acknowledged the arrest but asserted, “I didn’t believe during my confirmation process and I don’t believe now that I was obligated to share a fully expunged matter from my past.” Kristen Clarke also stated, “When given the option to speak about such traumatic incidents in my life, I have chosen not to.”

“[W]hoever, in any matter within the jurisdiction of the . . . legislative branch of the Government of the United States, knowingly and willfully . . . makes any materially false, fictitious, or fraudulent statement or representation, . . . shall be fined under this title, imprisoned not more than 5 years o[r] both.” 18 U.S.C. § 1001(a)(2).

Senator Cotton did not merely ask Kristen Clarke whether she ever had been arrested for a violent crime; he also asked if she had been accused of one. By any objective measure, the facts as alleged by Avery constitute a violent crime. Kristen Clarke, Avery claims, attacked him and injured him to the point that he required emergency-medical treatment for his finger, which had been cut to the bone. Even if the Prince George’s County authorities had not arrested Kristen Clarke, she still would have been required to answer affirmatively to Senator Cotton’s question. Kristen Clarke knew full well what Avery had alleged. She is a highly accomplished attorney; indeed, she is one of the most powerful figures in the Biden Justice Department. It is implausible that she does not understand that Avery’s allegations constitute an accusation of a violent crime.

Kristen Clarke’s defense in her statement to CNN—that the matter was expunged and therefore not subject to disclosure—is absurd. It is true that Maryland Code of Criminal Procedure § 10-109 prohibits employers—both private and in state government—from inquiring about expunged matters. As Kristen Clarke well should know, the State of Maryland has no authority to prohibit employers in other states from making such inquiries. The State of Maryland only has jurisdiction to prohibit employers from doing so within its borders.

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<sup>2</sup> Senator Cotton: Nomination of Kristen M. Clarke to be an Assistant Attorney General of the United States Questions for the Record, April 21, 2021, *available at* <https://www.judiciary.senate.gov/imo/media/doc/Kristen%20Clarke%20Responses%20for%20the%20Record.pdf> (last visited June 24, 2024).



Kristen Clarke’s case is even more clear-cut because it concerns the advice-and-consent process outlined in Article II, Section 2, Clause 2 of the United States Constitution (the Appointments Clause). Presidents submit nominees for Senate evaluation. It is imperative that the Senate is provided with accurate information in order for it to provide informed constitutional advice and consent on each nominee. Such information includes past instances of alleged misconduct by nominees. The nominee must make senators aware of such issues in order to judge fully the character and fitness of each nominee to serve in the most powerful positions of government. The laws of the State of Maryland cannot supersede the Appointments Clause. Pursuant to Article VI, Clause 2 of the United States Constitution, it—and not the laws of the State of Maryland—is the supreme law of the land.

The Senate confirmed Kristen Clarke’s nomination by a vote of 51-48 (with 1 senator not voting).<sup>3</sup> But for Kristen Clarke’s perjury, the Senate almost certainly would not have confirmed her nomination. In other words, Kristen Clarke lied her way into one of the most senior political appointments in the Biden Justice Department—and she is getting away with it under your leadership.

There is ample evidence to support this referral for false statements and perjury. Avery has accused Kristen Clarke of a violent crime. He also has alleged that local Maryland police arrested her. Police and court records corroborate the occurrence of the arrest. Most crucially, Kristen Clarke acknowledged it in her statement to reporter Hannah Rabinowitz of CNN. Kristen Clarke answered Senator Cotton’s question under oath in a manner contrary to her admission three years later.

Kristen Clarke’s conduct is egregious. Senator Cotton asked her a straightforward question, and she willfully and knowingly gave a false answer. Kristen Clarke claims that she had an “option” not to disclose this incident. This assertion shows an utter disregard for the role of the United States Senate in evaluating the worthiness of a nominee for confirmation. Neither Kristen Clarke nor the State of Maryland is entitled to decide what information the Senate deserves to know. That prerogative lies with the Senate. Senator Cotton asked a routine question, and Kristen Clarke failed to answer it honestly.

When discussing President Trump, you have stated: “No person is above the law in this country.”<sup>4</sup>

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<sup>3</sup> United States Senate, Roll Call Vote #203, 117th Congress - 1st Session, May 25, 2021, *available at* [https://www.senate.gov/legislative/LIS/roll\\_call\\_votes/vote1171/vote\\_117\\_1\\_00203.htm](https://www.senate.gov/legislative/LIS/roll_call_votes/vote1171/vote_117_1_00203.htm) (last visited June 24, 2024).

<sup>4</sup> AG Garland on Charging a Former President: No One Is Above the Law, C-SPAN, Jan. 20, 2022, *available at* <https://www.c-span.org/video/?c5024451/ag-garland-charging-president-law> (last visited June 24, 2024).



More than seven weeks after clear evidence of Kristen Clarke's false statements and perjury became public, it is very clear you consider her above the law. This is unacceptable, and I demand you open a criminal probe.

Thank you for your attention to this important matter.

Sincerely,

Mike Davis, President and Founder  
Article III Project (A3P)

Paul Vaughn Statement before the Subcommittee on the  
Constitution and Limited Government of the Committee on the Judiciary  
Revisiting the Implications of the FACE Act: Part 2

# Exhibit 8

**FILED**  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TENN.

OCT 03 2022

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

  
DEPUTY CLERK

UNITED STATES OF AMERICA )  
)  
v. )  
)  
[1] CHESTER GALLAGHER )  
[2] HEATHER IDONI )  
[3] CALVIN ZASTROW )  
[4] COLEMAN BOYD )  
[5] CAROLINE DAVIS )  
[6] PAUL VAUGHN )  
[7] DENNIS GREEN )  
[8] EVA EDL )  
[9] EVA ZASTROW )  
[10] JAMES ZASTROW )  
[11] PAUL PLACE )

NO. 3:22-00327

18 U.S.C. § 2  
18 U.S.C. § 241  
18 U.S.C. § 248(a)(1)

INDICTMENT

THE GRAND JURY CHARGES:

The Grand Jury for the Middle District of Tennessee charges that, at times material to this Indictment, on or about the dates stated below:

Introduction

1. The carafem Health Center ("Clinic") was a provider of reproductive health services, including abortions, located in Mt. Juliet, in the Middle District of Tennessee.

2. The following individuals were present at the Clinic on March 5, 2021, together and with others known and unknown to the Grand Jury:

- a. [1] CHESTER GALLAGHER, an individual who resides in Tennessee;
- b. [2] HEATHER IDONI, an individual who resides in Michigan;
- c. [3] CALVIN ZASTROW, an individual who resides in Michigan;
- d. [4] COLEMAN BOYD, an individual who resides in Mississippi;

- e. [5] CAROLINE DAVIS, an individual who resides in Michigan;
- f. [6] PAUL VAUGHN, an individual who resides in Tennessee;
- g. [7] DENNIS GREEN, an individual who resides in Virginia;
- h. [8] EVA EDL, an individual who resides in South Carolina;
- i. [9] EVA ZASTROW, an individual who resides in Arkansas;
- j. [10] JAMES ZASTROW, an individual who resides in Missouri; and
- k. [11] PAUL PLACE, an individual who resides in Tennessee.

3. Employee A was employed by the Clinic and was at work on March 5, 2021.

4. Patient A was a Clinic patient who was seeking to obtain reproductive health services at the Clinic on March 5, 2021.

COUNT ONE

5. The allegations contained in paragraphs 1 through 4 of this Indictment are realleged and incorporated herein by reference.

6. From on or about February 10, 2021, to on or about March 5, 2021, in the Middle District of Tennessee and elsewhere, defendants [1] CHESTER GALLAGHER, [2] HEATHER IDONI, [3] CALVIN ZASTROW, [4] COLEMAN BOYD, [5] CAROLINE DAVIS, [6] PAUL VAUGHN, and [7] DENNIS GREEN did willfully combine, conspire, and agree with one another, and with other persons known and unknown to the Grand Jury, to injure, oppress, threaten, and intimidate patients and employees of the Clinic in the free exercise and enjoyment of the rights and privileges secured to them by the laws of the United States, namely, the right to obtain and seek to obtain, and to provide and seek to provide, reproductive health services, as provided by Title 18, United States Code, Section 248(c), in violation of Title 18, United States Code, Section 241.

Purpose of the Conspiracy

7. It was the plan and purpose of the conspiracy that defendants [1] CHESTER GALLAGHER, [2] HEATHER IDONI, [3] CALVIN ZASTROW, [4] COLEMAN BOYD, [5] CAROLINE DAVIS, [6] PAUL VAUGHN, and [7] DENNIS GREEN, aided and abetted by each other and by other co-conspirators known and unknown to the Grand Jury, would create a blockade to stop the Clinic from providing, and patients from obtaining, reproductive health services.

Overt Acts

8. In furtherance of the conspiracy, and to accomplish the objects of the conspiracy, the conspirators committed various overt acts, including, but not limited to, the following:

9. In or about February 2021, [1] CHESTER GALLAGHER utilized social media and promoted a series of anti-abortion events scheduled for March 4 through 7, 2021, in the Nashville area. [1] GALLAGHER used the term “rescue” to describe the physical blockade of a reproductive health care facility.

10. In or about mid-February 2021, [1] CHESTER GALLAGHER and [2] HEATHER IDONI used Facebook, a social media platform, to coordinate travel and logistics for [2] IDONI, [3] CALVIN ZASTROW, [5] CAROLINE DAVIS, [7] DENNIS GREEN, and other blockade participants known and unknown to the Grand Jury to travel to Nashville. [1] GALLAGHER and [2] IDONI also used Facebook to identify blockade participants who would be willing to risk arrest to further the objects of the conspiracy.

11. In or about mid-February 2021, [5] CAROLINE DAVIS used Facebook to communicate to [4] COLEMAN BOYD that she would meet him for a “rescue” in Tennessee in

March 2021. [5] DAVIS then did meet [4] BOYD and others in Mt. Juliet, Tennessee, on or about March 4, 2021, to participate in a blockade at the Clinic.

12. In or about March 2021, [2] HEATHER IDONI, [3] CALVIN ZASTROW, [4] COLEMAN BOYD, [5] CAROLINE DAVIS, [7] DENNIS GREEN, and others known and unknown to the Grand Jury, traveled to the Middle District of Tennessee from other states.

13. In or about March 4, 2021, [4] COLEMAN BOYD advertised the clinic blockade on his Facebook social media account. [4] BOYD posted, "Lord willing, our family will be doing a Facebook live of some ministry activities tomorrow morning around 7:45 AM central time. Please be in prayer towards this. Please plan to join us and share it if possible."

14. On or about 7:45 a.m. on March 5, 2021, [4] COLEMAN BOYD stood in the hallway outside of the Clinic suite and used his Facebook account to create a livestream titled, in part, "Mt. Juliet, TN Rescue March 5, 2021."

15. [1] CHESTER GALLAGHER, [2] HEATHER IDONI, [3] CALVIN ZASTROW, [6] PAUL VAUGHN, and others known and unknown to the Grand Jury gathered in the hallway outside of the Clinic suite, directly outside the Clinic's two entry doors, at 7:45 a.m.

16. [1] CHESTER GALLAGHER and [3] CALVIN ZASTROW stood directly in front of the Clinic's main entry door, blocking access to the Clinic when [4] COLEMAN BOYD commenced his Facebook livestream at approximately 7:45 a.m. [4] BOYD announced on his Facebook livestream that the individuals depicted on his livestream, which included himself, [1] GALLAGHER, [2] HEATHER IDONI, [3] CALVIN ZASTROW, [6] PAUL VAUGHN, and others known and unknown to the Grand Jury, were present at 7:45 a.m. because the Clinic was scheduled to open at 8:00 a.m.

17. At approximately 7:51 a.m., [7] DENNIS GREEN used his Facebook account to create a livestream of the blockade of the Clinic. [7] GREEN recorded himself entering the Clinic building, and then riding up the elevator to the Clinic floor with [5] CAROLINE DAVIS and others known and unknown to the Grand Jury.

18. [5] CAROLINE DAVIS, [7] DENNIS GREEN, and others known and unknown to the Grand Jury arrived approximately six minutes into [4] COLEMAN BOYD'S livestream video, at approximately 7:51 a.m. [5] DAVIS, [7] GREEN, and others known and unknown to the Grand Jury walked through the clinic hallway and assumed positions blocking the main door to the Clinic.

19. When Patient A and her companion arrived outside the Clinic for a scheduled reproductive health service, they encountered [4] COLEMAN BOYD, who was standing next to the only hallway leading to the Clinic's entry doors. [4] BOYD attempted to engage Patient A by asking her numerous questions. For example, [4] BOYD asked Patient A if she was, "Trying to come to the abortion mill?" Patient A responded and walked away, but [4] BOYD persisted and asked Patient A, "Can we talk to you for a minute?" [4] BOYD then encouraged one of his children to approach Patient A and her companion. [4] BOYD'S child then walked up to Patient A and asked her and her companion if they're "looking for the abortion clinic?" Patient A and her companion walked into the crowded hallway but stopped short of the Clinic entrance. [4] BOYD then directed his livestream camera into the hallway and captured Patient A speaking with Employee A. [4] BOYD told his livestream audience that Patient A was a "mom coming to kill her baby."

20. When Employee A returned to the Clinic staff door, [3] CALVIN ZASTROW physically blocked the door for Clinic staff. [3] ZASTROW refused to move from the door, and

acknowledged to Employee A that he was trespassing. Employee A was unable to enter the Clinic, and exited the building.

21. Shortly after 8:00 a.m., [1] CHESTER GALLAGHER used his Facebook account to post a livestream video titled, "RESCUE." [1] GALLAGHER announced that he, [3] CALVIN ZASTROW, and another individual known to the Grand Jury are "leading a rescue." [1] GALLAGHER further stated that the "rescuers" present were "willing to be incarcerated" to "rescue families from this place of destruction." During the course of the recording, [1] GALLAGHER explained that a successful "rescue" involved delay tactics that kept patients from obtaining, and the Clinic from performing, abortions.

22. [1] CHESTER GALLAGHER announced to [2] HEATHER IDONI, [3] CALVIN ZASTROW, [5] CAROLINE DAVIS, [6] PAUL VAUGHN, [7] DENNIS GREEN, and others known and unknown to the Grand Jury that, "It's very important that if you're not planning on being arrested, do not sit in front of the door, do not get pictured blocking the door. I just don't want anybody having their picture taken sitting in front of the door unless you're being arrested. Otherwise, just stand up and be in the hallway." Following [1] GALLAGHER'S announcement, [2] IDONI, [3] ZASTROW, [5] DAVIS, and [7] GREEN and others known and unknown to the Grand Jury used their bodies to block the Clinic's doors. [4] COLEMAN BOYD remained at the opposite end of the Clinic hallway livestreaming the events with a cell phone.

23. [2] HEATHER IDONI, [3] CALVIN ZASTROW, [5] CAROLINE DAVIS, [7] DENNIS GREEN and others known and unknown to the Grand Jury continued to physically block the Clinic's doors.

24. After officers with the Mt. Juliet Police Department arrived and directed the individuals in the hallway outside the Clinic to leave, [1] CHESTER GALLAGHER told

[2] HEATHER IDONI, [3] CALVIN ZASTROW, [5] CAROLINE DAVIS, [6] PAUL VAUGHN, [7] DENNIS GREEN and others known and unknown to the Grand Jury that, "We're at the point now where we need to know who is going to jail and who is not." Following [1] GALLAGHER'S announcement, [2] IDONI, [3] CALVIN ZASTROW, [5] DAVIS, [7] GREEN, and others known and unknown to the Grand Jury blocked the Clinic's doors.

25. As [6] PAUL VAUGHN stood in the hallway, [1] CHESTER GALLAGHER announced to [2] HEATHER IDONI, [3] CALVIN ZASTROW, [5] CAROLINE DAVIS, [6] VAUGHN, [7] DENNIS GREEN and others known and unknown to the Grand Jury that, "We have two doors to block."

26. During [1] CHESTER GALLAGHER'S Facebook livestream, [6] PAUL VAUGHN alerted [1] GALLAGHER and others that the police were soon going to arrest individuals after giving a final warning. After [6] VAUGHN spoke with the police officers he stood next to [1] GALLAGHER, who explained to his Facebook livestream audience that [6] VAUGHN was engaging the police and "trying to buy us as much time as we can."

27. [1] CHESTER GALLAGHER stood next to [2] HEATHER IDONI, [5] CAROLINE DAVIS, [7] DENNIS GREEN and others known and unknown to the Grand Jury in front of the Clinic's main entry door and explained to his Facebook livestream audience that he and the blockade participants "already turned away one couple" and hoped to "stop as many murderous appointments as we can."

All in violation of Title 18, United States Code, Section 241.

**COUNT TWO**

28. The allegations contained in Paragraphs 1 through 27 of this Indictment are realleged and incorporated herein by reference.

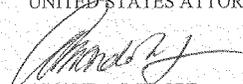
29. On or about March 5, 2021, in the Middle District of Tennessee and elsewhere, the defendants, [1] CHESTER GALLAGHER, [2] HEATHER IDONI, [3] CALVIN ZASTROW, [4] COLEMAN BOYD, [5] CAROLINE DAVIS, [6] PAUL VAUGHN, [7] DENNIS GREEN, [8] EVA EDL, [9] EVA ZASTROW, [10] JAMES ZASTROW, and [11] PAUL PLACE, aiding and abetting one another, did by force, threat of force, and physical obstruction, intentionally injure, intimidate, and interfere with, and attempt to injure, intimidate, and interfere with Patient A, Employee A, and the other employees of the Clinic, because Patient A was obtaining, and the Clinic was providing, reproductive health services.

All in violation of Title 18, United States Code, Sections 248(a)(1) and 2.

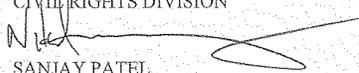
A TRUE BILL

FOREPERSON

MARK H. WILDASIN  
UNITED STATES ATTORNEY

  
AMANDA J. KLOPF  
ASSISTANT UNITED STATES ATTORNEY

KRISTEN M. CLARKE  
ASSISTANT ATTORNEY GENERAL  
CIVIL RIGHTS DIVISION

  
SANJAY PATEL  
NIKHIL RAMNANEY  
TRIAL ATTORNEYS

Paul Vaughn Statement before the Subcommittee on the  
Constitution and Limited Government of the Committee on the Judiciary  
Revisiting the Implications of the FACE Act: Part 2

# Exhibit 9

OPERATION RESCUE DALLAS/FORT WORTH  
**STOP F.A.C.E.  
 RALLY**  
 THURSDAY, SEPTEMBER 30, 1993  
 CALVARY HILL BAPTIST CHURCH  
 3300 LA PRADA  
 MESQUITE, TEXAS  
 7:30 PM  
 Just east of I-635 on LaPrada.

"FOR IF YOU REMAIN SILENT AT THIS TIME, RELIEF AND DELIVERANCE FOR THE JEWS WILL ARISE FROM ANOTHER PLACE, BUT YOU AND YOUR FATHER'S FAMILY WILL PERISH. AND WHO KNOWS BUT THAT YOU HAVE COME TO ROYAL POSITION FOR SUCH A TIME AS THIS?"  
 ESTHER 4:14

CONGRESSIONAL MAILING NUMBER  
 ASK FOR MAIL ROOM # 703 544-3171. TO BE COVERED.  
 CONGRESSIONAL ADDRESSES

THE HONORABLE SENATOR'S NAME U.S. SENATE WASHINGTON, DC 20510	THE HONORABLE "REPRESENTATIVE'S NAME" U.S. HOUSE OF REPRESENTATIVES WASHINGTON, DC 20515
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WASHINGTON, D.C.  
 OCTOBER 5-7, 1993  
**OPERATION RESCUE NATIONAL  
 EVENTS**

Lobbying representatives, public demonstrations,  
 civil disobedience on October 5.

BEST WESTERN ARLINGTON  
 800-426-6099  
 \$59 PER NIGHT FLAT RATE PER ROOM

**Christians  
 Are About  
 To Be Put  
 In Federal  
 Prisons...**

**...What  
 Are You  
 Going To  
 Do To  
 Stop It?**

Congress is on the verge of passing a law that makes "Operation Rescue activities" a federal offense, punishable with federal prison time. If a person peacefully "sits-in" at an abortion mill, he could be sentenced to one year in a federal prison. If he were convicted of a second offense, he could be placed in a federal prison for up to three years.

The name of this law is the Freedom of Access to Clinic Entrances (F.A.C.E.). It is a direct assault on Christians and pro-lifers.

When Janet Reno became Attorney General, she said one of her top priorities was prosecuting pro-lifers. Our nation has a crisis of gang warfare, mail fraud, credit card scams, drive by shootings and more, but Attorney General Reno wants to hammer non-violent Christians.

Friend, the Body of Christ is under attack. What will you do? Will you stand up for your brethren? Will you resist this oppression? Or will you give your approval to the persecution of your fellow Christians? If you are silent, your silence translates into approval.

In the Bible (Esther 4:14), Esther was urged not to remain silent for she had attained royalty "for such a time as this." Fellow believers, the time is now! At such a time as this we must not remain silent.

We must call, write and meet with our senators and congressmen and insist that they vote against this bill. Write letters to the editor and call in to radio talk shows denouncing this unconscionable bill.

Below are some important points to make when talking to your representatives, in letters to the editor, to your pastor, and to anyone else with whom you talk about F.A.C.E.:

◆ A primary reason given to support this bill is to remove the potential for violence. *We already have laws against violence.* This legislation will stop peaceful life-saving activities at abortion mills. It seeks to remove the Christian witness that defends the lives of mothers and their children.

◆ It would put Christians like you and me in federal prison for up to 3 years with fines up to \$250,000.

◆ We would lose our right to vote or hold office.

◆ Make it clear that F.A.C.E. is an assault on Christianity and the church because Christians are the primary rescuers of the children.

◆ Priests and Protestant ministers should make it clear that this law would put them and their parishioners in federal prison.

◆ Discuss how "sit-ins" and civil disobedience are part of our country's heritage.

◆ Ask why pro-life citizens are being singled out for this harsh punishment. Many other groups use blockades and civil disobedience, but they are not the targets of such legislation. Use these specific examples:

- Homosexuals sitting-in or disrupting church services
- Anti-apartheid activists sitting-in at the South African embassy
- Environmental activists blocking logging trails and booby-trapping trees
- Black civil rights activists blocking bridges or tunnels during "days of outrage"
- Anti-nuclear demonstrators staging sit-ins at nuclear facilities
- Union members blocking access during strikes and other labor actions
- Homosexuals and lesbians recently held a sit-in at the White House
- The Washington, DC mayor recently was

arrested for a sit-in demanding statehood for the District of Columbia.

Will any of these activists be charged with a felony? Will any of them have to face federal prisons for their sit-ins and blockades? Of course not. Pro-lifers are being singled out for politically incorrect speech, beliefs, and activities.

◆ These are NOT the kinds of laws passed in a free country that treasures the right to vigorous dissent.

◆ If the congressman argues that we are inhibiting women from "exercising their constitutional rights," take the opportunity to re-educate him about two things:

1. Abortion is murder. It is a newly created so-called right.
2. By this logic, homosexuals who disrupt church services are violating the constitutional rights of parishioners. Environmental activists are disrupting the constitutional rights of workers and business to trade and to do business. Why is the constitutional right of child-killing more sacred than all other "constitutional rights"?

If your representative is going to vote for F.A.C.E., insist that he change his mind. This bill is the first step down the unwelcome path to tyranny and oppression. Tell him this is anti-Christian bigotry. It will be remembered.

If your representative is going to vote against F.A.C.E., urge him to loudly denounce the bill for the reasons mentioned above. Insist that he use his influence to persuade his colleagues to vote against this bill.

**STOP  
F.A.C.E.**

Mr. ROY. Thank you, Mr. Vaughn.  
Ms. Hawley, you may give your testimony.

#### STATEMENT OF ERIN M. HAWLEY

Ms. HAWLEY. Good afternoon. Thank you, Chair Roy, Ranking Member Scanlon, and the Members of the Committee.

One of the most enduring and crucial features of the American constitutional design is its commitment to the equal application of law.

John Adams famously described the republic as a government of laws, not of men, meaning that in America the rule-of-law comes before politics. Yet, the Biden Administration has broken this promise.

It has consistently put politics above the rule-of-law in its one-sided application of the FACE Act to target prolife individuals.

The text of the FACE Act is clear. Its protections apply to, quote, “reproductive health services,” which is broadly defined to include not only abortion facilities, but also pregnancy centers.

The FACE Act also protects churches and other houses of worship from violence, vandalism, and intimidation. Instead of applying the FACE Act in an even-handed way, the Biden’s DOJ has weaponized the act to target prolife advocates.

Since 2001, it has brought criminal or civil cases under the FACE Act against 55 individuals, 50 of them prolife. It has charged 24 cases under the FACE Act, but only two in defense of pregnancy centers.

Since the *Dobbs* decision was leaked in May 2022, there have been close to 100 pregnancy care centers that have been vandalized, spray painted, or firebombed.

Only eight percent of the Biden DOJ’s FACE Act cases have been filed to protect pregnancy centers. Again, just two cases.

As for churches, again, expressly protected by the FACE Act, the Family Research Council has identified 436 instances of threats or violence in 2023 alone.

Shockingly, the Biden Department of Justice has failed to initiate a single FACE Act prosecution to protect a house of worship. Take just a few examples of the violence confronting prolife organizations.

On June 7, 2022, CompassCare’s office in Buffalo, New York, was firebombed and tagged with spray paint reading “Jane was here.” Three days later on June 10th the Gretchen Pregnancy Resource Center in Oregon was set on fire, and on June 25th Life Choices in Longmont, Colorado, was firebombed and spray painted with the message, “If abortions aren’t safe neither are you.”

Not only has the Biden Justice Department demonstrated bias in its refusal to prosecute violence against prolife organizations, but for the first time in the FACE Act’s history the Biden’s DOJ has used the FACE hook—excuse me, the FACE Act as a hook to tack on an additional conspiracy against rights felony charge.

This charge comes with a potential 10-year prison sentence even for nonviolent civil disobedience, showing how the Biden’s DOJ has upped the ante, placing prolife Americans in as much jeopardy as possible.

Take Eva Edl, an 89-year-old survivor of a Soviet concentration camp, who sat in front of the entrance to an abortion clinic in a wheelchair. Because the Biden's DOJ tacked on a conspiracy charge, Eva could face a sentence up to 11 years in Federal prison along with hundreds of thousands of dollars in Federal fines, all for singing and praying from her wheelchair.

The Biden DOJ's one-sided use of the FACE Act raises serious concerns about viewpoint-based selective enforcement. While the Executive Branch does have discretion to decide whether to prosecute a case, it cannot selectively enforce the law in a way that violates the Constitution.

As the Federal Courts have said, "this is antithetical to a free society." The Biden's DOJ has consistently declined to enforce the FACE Act against individuals attacking pregnancy centers and churches while vigorously enforcing it against prolife advocates. That's the definition of selective enforcement.

To make matters worse, the FACE Act is a questionable exercise of Congress' commerce clause authority. The Federal Government is one of limited enumerated powers.

Thus, in *United States v. Lopez* and *United States v. Morrison*, the Supreme Court struck down two criminal statutes because they had nothing to do with commerce.

These cases rejected the argument that Congress may regulate crime so long as it has an aggregate effect on economic activity. That would obliterate the distinction between what is national and what is local.

To be clear, there is never any excuse for violence in expressing one's viewpoint. Repealing the FACE Act would not mean that criminal conduct could occur with impunity or without legal consequence. Every State has laws that regulate trespass, assault, disorderly conduct, unlawful assembly, and the like.

In summary, the FACE Act has been weaponized to target prolife activity while leaving pregnancy centers and churches, largely, unprotected. This is not the even-handed application of the law the American people deserve.

[The prepared statement of Ms. Hawley follows:]

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TESTIMONY

BEFORE THE UNITED STATES HOUSE OF  
REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION AND  
LIMITED GOVERNMENT

ON

REVISITING THE IMPLICATIONS OF THE FACE  
ACT: PART II

BY

ERIN MORROW HAWLEY, SENIOR COUNSEL &  
VICE PRESIDENT OF THE CENTER FOR LIFE AND REGULATORY PRACTICE

ALLIANCE DEFENDING FREEDOM

DECEMBER 18, 2024

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**The Text of the FACE Act Protects Pregnancy Centers and Houses of  
Worship, in Addition to Abortion Facilities like Planned Parenthood.**

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Congress passed and President Clinton signed the Freedom of Access to Clinic Entrances Act (“FACE Act” or “the Act”) in 1994. The FACE Act protects people from injury, intimidation, or interference when they provide or seek out “reproductive health services”—a broadly defined term—or exercise their freedom to worship. It does so by prohibiting use of or threats of force, obstruction, and property damage intended to disrupt religious worship or the administration of reproductive health care services. From its inception, the Act has carried with it the explicit promise that it would apply equally to all conduct that targets people or places that facilitate religious worship or reproductive health services. In the words of the FACE Act’s lead sponsor in the House of Representatives, then-Rep. Chuck Schumer:

It is evenhanded. It does not just protect the right to choose for those who wish to seek access to abortion services. It protects the rights of those who seek to counsel against abortion so that if pro-choice people were blockading a place that was trying to dissuade women from having abortions, the Federal Government could come in with equal force and say, “You cannot do that.”<sup>1</sup>

A plain reading of the FACE Act’s text is conclusive that all facilities and people that provide reproductive health services are covered under the Act, regardless of their views on abortion. The definition of “reproductive health services” includes those services “provided in a hospital, clinic, physician’s office, or other facility” and is not limited to medical procedures but includes “counselling or referral services relating to the human reproductive system.” This broad protection extends to life-affirming pregnancy centers just as it does to abortion clinics. *See Rieley v. Reno*, 860 F. Supp. 693, 702 (D. Ariz. 1994) (“[T]he language of FACE . . . would apply to an individual who spray paints the words ‘KEEP ABORTION LEGAL’ on a facility providing counseling regarding abortion alternatives as well as to the individual who spray paints the words ‘DEATH CAMP’ on a facility providing abortion services.”).

Pregnancy centers provide important services to women and families who need support during and after pregnancy. These centers offer life-affirming options and emotional, mental, material, and spiritual support to pregnant women and new mothers who may otherwise feel alone. The services provided by pregnancy centers include medical care, such as ultrasounds, pregnancy

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<sup>1</sup> 140 Cong. Rec. 30 (1994).

tests, STD testing and treatment, and abortion pill reversal; support for parents, including parenting and prenatal education classes, job training, and résumé building; counseling and mental health services, such as post-abortion support and recovery; and financial and material resources for new mothers, such as diapers, clothes, car seats, strollers, transportation, food, and housing. In 2022 alone, American pregnancy centers provided goods and services valued at \$358,725,517.<sup>2</sup>

Currently, the U.S. Department of Justice insists that “[t]he FACE Act is not about abortions” and that it “protects all patients, providers, and facilities that provide reproductive health services, including pro-life pregnancy counseling services and any other pregnancy support facility providing reproductive health care.”<sup>3</sup> In short, the Act does not discriminate based on ideology.

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**The Biden Administration Has Weaponized the FACE Act to Target Pro-Life Advocates.**

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The text of the FACE Act is clear: Its protections apply not only to abortion clinics but also to pregnancy centers and places of worship.<sup>4</sup> But the government has wielded the FACE Act in a one-sided manner, almost exclusively targeting pro-life advocates. Indeed, to friendly audiences, the Biden administration all but admits the FACE Act has been weaponized to target the pro-life community. A month after the *Dobbs* decision, the White House convened a meeting of lawyers in which Associate Attorney General Vanita Gupta called the decision “devastating.” She explained that the Department of Justice had established a “Reproductive Rights Task Force” of “senior officials from across the department, who meet daily on [their] response to *Dobbs*,” including “enforce[ment] of the FACE Act” against pro-life efforts.<sup>5</sup> In a speech in December 2022, Gupta called *Dobbs* “a devastating blow ... increasing the urgency of our ... enforcement of the FACE Act.”<sup>6</sup>

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<sup>2</sup> *Pregnancy Centers Offer Hope for a New Generation*, CHARLOTTE LOZIER INSTITUTE, [https://lozierinstitute.org/wp-content/uploads/2023/12/Pregnancy-Center-Update\\_2022.pdf](https://lozierinstitute.org/wp-content/uploads/2023/12/Pregnancy-Center-Update_2022.pdf).

<sup>3</sup> Civil Rights Division, U.S. Dep’t of Justice, *Protecting Patients and Health Care Providers* (May 22, 2023) JUSTICE.GOV, <https://www.justice.gov/crt/protecting-patients-and-health-care-providers>.

<sup>4</sup> Although “place of religious worship” is not defined in the Act, neither is it limited to a specific faith tradition or practice. See *Jingrong v. Chinese Anti-Cult World All. Inc.*, 16 F.4th 47, 49 (2d Cir. 2021) (“We hold that ‘a place of religious worship’ is anywhere that religious adherents collectively recognize or religious leadership designates as a space primarily to gather for or hold religious worship activities.”).

<sup>5</sup> Vanita Gupta, *Associate Attorney General Vanita Gupta Delivers Remarks at White House Convening of Lawyers in Defense of Reproductive Rights*, JUSTICE.GOV (Jul. 29, 2022), <https://www.justice.gov/opa/speech/associate-attorney-general-vanita-gupta-delivers-remarks-white-house-convening-lawyers>.

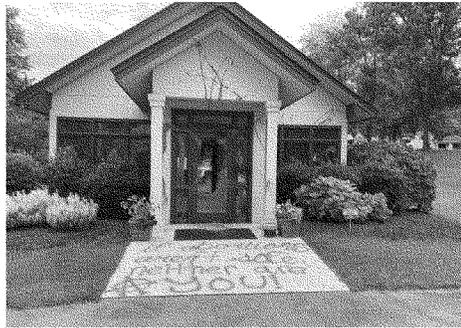
<sup>6</sup> Vanita Gupta, *Associate Attorney General Vanita Gupta Delivers Remarks at the Civil Rights Division’s 65th Anniversary*, JUSTICE.GOV (Dec. 6, 2022), <https://www.justice.gov/opa/speech/associate-attorney-general-vanita-gupta-delivers-remarks-civil-rights-divisions-65th>.

The Biden Department of Justice has followed those orders. Since 2021, it has brought criminal or civil cases under the FACE Act against at least 50 pro-life advocates.<sup>7</sup> It has charged 24 FACE Act cases against 55 defendants but only two of the cases were brought in defense of pregnancy centers.<sup>8</sup> None have been brought to protect churches or other houses of worship. Indeed, despite hundreds of attacks on churches and pregnancy centers since May 2022, only 8% of Biden DOJ FACE Act cases have been filed to protect pro-life Americans.<sup>9</sup>

Make no mistake: there has been no shortage of opportunities for the Biden DOJ to enforce the FACE Act to protect pregnancy centers and houses of worship. Since the *Dobbs* decision was leaked in May 2022, there have been close to 100 pro-life pregnancy centers that have been vandalized, spraypainted with threatening messages, firebombed, or received threats of violence.<sup>10</sup>

**Examples:**

On June 6, 2022, **Mountain Area Pregnancy Services in Asheville, North Carolina** was doused in red paint, had its windows and doors shattered, and was spray-painted with the message, “If abortions aren’t safe, neither are you!”<sup>11</sup>



<sup>7</sup> U.S. Department of Justice, *Recent Cases on Violence Against Reproductive Health Care Providers*, JUSTICE.GOV, <https://www.justice.gov/crt/recent-cases-violence-against-reproductive-health-care-providers>.

<sup>8</sup> Chip Roy, *Here's Why The FACE Act Must Be Repealed*, DAILY WIRE (March 12, 2024)

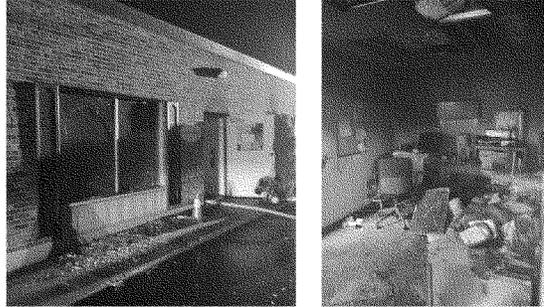
<https://www.dailywire.com/news/heres-why-the-face-act-must-be-repealed/3/12>

<sup>9</sup> *Id.*

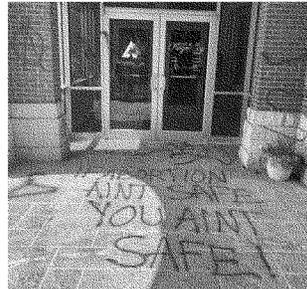
<sup>10</sup> *Tracking Attacks on Pregnancy Centers & Pro-Life Groups*, CATHOLIC VOTE (last updated Nov. 12, 2024), <https://catholicvote.org/pregnancy-center-attack-tracker/>.

<sup>11</sup> Ingraham Angle, *Victim of anti-abortion terrorism joins Laura: We will not back down*, FOX NEWS (Jun. 7, 2022), <https://www.foxnews.com/video/6307433820112>.

On June 7, 2022, **CompassCare's office in Buffalo, New York**, was firebombed and tagged with spray paint reading, "Jane was here."<sup>12</sup>



On June 25, 2022, **Blue Ridge Pregnancy Center in Lynchburg, Virginia**, was vandalized with a spraypainted message reading, "If abortion ain't safe, you ain't safe!"<sup>13</sup>



<sup>12</sup> *CompassCare's Buffalo Office Firebombed by Abortion Terrorists*, COMPASSCARE (Jun. 7, 2022), <https://www.compasscarecommunity.com/2022/06/compasscares-buffalo-office-firebombed-by-abortion-activists/>.  
<sup>13</sup> Ivy Lyons, 'No room for this in Virginia' — Gov. Youngkin decries vandalism at crisis pregnancy center, WTOP NEWS (Jun. 25, 2022), <https://wtop.com/virginia/2022/06/no-room-for-this-in-virginia-gov-youngkin-decries-vandalism-at-crisis-pregnancy-center/>.

On December 17, 2022, **Pregnancy Aid Detroit in Eastpointe, Michigan**, was tagged with spray paint saying “liars,” “fake clinic,” and “Jane’s Revenge.” In addition, a board member’s home was spray-painted and had windows broken.<sup>14</sup>



On March 2, 2023, vandals used hammers to smash the windows of **First Care in Minneapolis, Minnesota** and spray-paint the messages, “If abortions aren’t safe, neither r u.”<sup>15</sup>



<sup>14</sup> Francis X. Donnelly, *Pro-life pregnancy center in Eastpointe, board member's house spray-painted with graffiti*, THE DETROIT NEWS (Dec. 17, 2022), <https://www.detroitnews.com/story/news/local/macomb-county/2022/12/17/pro-life-pregnancy-center-board-members-house-graffiti-spray-painted/69737422007/>.

<sup>15</sup> Joe Bukuras, *Abortion activists smash windows at Minnesota pregnancy clinic that provides free diapers*, CATHOLIC NEWS AGENCY (Mar. 6, 2023), <https://www.catholicnewsagency.com/news/253802/abortion-activists-smash-windows-at-minnesota-pregnancy-clinic-that-provides-free-diapers>.

On June 25, 2022, **Life Choices Free Pregnancy Services in Longmont, Colorado**, was firebombed and spray-painted with the message, “if abortions aren’t safe, neither are you.”<sup>16</sup>



A post dated June 25, 2022, on AnarchistNews.org shows vandalism to **Avenues Pregnancy Clinic in Glendale, California**.<sup>17</sup> The phrases written were “Jane was here,” “abort the court,” and “If abortions aren’t safe neither are you.” The post continues:

To all the conservatives, Fox News anchors, judges, cops, Christian extremists, or federal agents reading this:

This attack is nothing in compare [sic] to what is in store for you. Some spray paint will be the least of your worries. For decades you have bombed abortion clinics and murdered doctors. We fight not just for abortion rights, but for trans liberation, ecological harmony, decolonization, the destruction of white supremacy and capitalism, and the uprooting of the entire global civilization.



We will hunt you down and make your lives a living hell. You started this war but we will win it. So far its [sic] just been pregnancy crisis centers, but tomorrow it might be your cars, your homes, or even your lives. We support a diversity of tactics and we will not step down in this fight.

Expect us, Jane’s Revenge

<sup>16</sup> Nick Wills, *Longmont pregnancy center vandalized overnight*, KDVR NEWS (Jun. 26, 2022), <https://kdvr.com/news/local/longmont-pregnancy-center-vandalized-overnight/>.

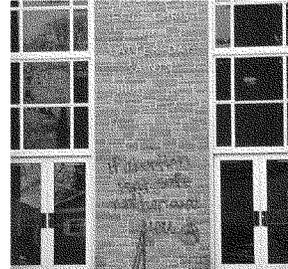
<sup>17</sup> Anonymous, *Jane’s Revenge – Night of Rage Communique*, ANARCHIST NEWS (Jun. 25, 2022), <https://anarchistnews.org/content/jane%E2%80%99s-revenge-%E2%80%93-night-rage-communique>.

On June 10, 2022, the **Gresham Pregnancy Resource Center in Gresham, Oregon** was burned.<sup>18</sup>



These attacks aren't limited to pregnancy centers. Last year, Arielle Del Turco with the Family Research Council, reported to this Committee over 400 incidents of hostile acts directed at churches between 2018 and 2022, including hundreds of acts of vandalism, dozens of arson attacks, and incidents involving guns or bomb threats.<sup>19</sup> In 2023 alone, the FRC identified 436 incidents against churches—more than double the number in 2022, and eight times the number in 2018.<sup>20</sup> Shockingly, the Biden DOJ has failed to initiate a single prosecution to protect churches and other houses of worship under the FACE Act.

After the leak of the *Dobbs* opinion, the anarchist group “Jane’s Revenge” attacked various churches in Olympia, Washington, spray-painted pro-abortion messages onto the exteriors of Harbor Church, Church of Latter-Day Saints, St. Michael’s Catholic Church, and Calvary Church.<sup>21</sup>



<sup>18</sup> Colin Miner, *Gresham Pregnancy Resource Center Fire ‘Suspicious,’ Police Say*, PATCH (June 10, 2022),

<https://patch.com/oregon/portland/s/iajic/gresham-pregnancy-resource-center-fire-suspicious-police-say>.

<sup>19</sup> *Revisiting the Implications of the FACE Act: Hearing Before the H. Judiciary Subcomm. on Const. and Ltd. Gov’t*, 118th Cong. 1 (2023) (written testimony of Arielle Del Turco, Director of the Center for Religious Liberty, Family Research Council), <https://www.congress.gov/118/meeting/house/115924/witnesses/HHRG-118-JU10-Wstate-DelTurcoA-20230516.pdf>.

<sup>20</sup> Arielle Del Turco, *Hostility Against Churches Is on the Rise in the United States*, FAMILY RESEARCH COUNCIL (Feb. 2024), <https://www.frc.org/issueanalysis/hostility-against-churches-is-on-the-rise-in-the-united-states>.

<sup>21</sup> Josh Christenson, *Anarchists Take Credit for Vandalizing Four Pro-Life Churches in Washington State*, WASH. FREE BEACON (May 25, 2022), <https://freebeacon.com/latest-news/anarchists-take-credit-for-vandalizing-four-pro-life-churches-in-washington-state/>.

In April 2023, less than a half hour after an Easter service, a massive fire was started at Faith Lutheran Church in Cambridge, Massachusetts.<sup>22</sup> The fire spread quickly and caused a great deal of damage, requiring the steeple to be removed. Thankfully, no one was hurt. The FBI investigated the fire as an arson.



In July 2020, while parishioners were getting ready for mass at Queen of Peace Catholic Church in Ocala, Florida, someone crashed a minivan through the main doors, poured gasoline inside the church, and lit it on fire, causing substantial damage.<sup>23</sup>



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<sup>22</sup> Staff, *Cambridge church fire on Easter Sunday investigated as arson*, WBZ BOS. CBS NEWS (April 19, 2023), <https://www.cbsnews.com/boston/news/cambridge-church-fire-easter-sunday-investigated-arson/>.

<sup>23</sup> *Florida Catholic church rebuilding after arson attack*, CATHOLIC NEWS AGENCY (July 27, 2020), <https://www.catholicnewsagency.com/news/45315/florida-catholic-church-rebuilding-after-arson-attack>.

In one case, Maeve Nota, an abortion activist, was arrested for vandalizing the St. Louise Catholic Church in Bellevue, Washington. Nota smashed two of the church's glass doors, scrawled "F-k Catholics," "women haters," "kid groomers," and "rot in hell" on the church's walls, assaulted a church employee—throwing rocks at and spray painting the employee across the face—and defaced several religious statues.<sup>24</sup> The Biden DOJ *declined* to pursue a FACE Act claim and instead charged Nota with misdemeanor destruction of religious property subject to a maximum one-year prison sentence.<sup>25</sup> In the plea agreement, the Biden DOJ recommended zero jail time.<sup>26</sup>



Unfortunately, these attacks on pro-life pregnancy centers and churches are typical of the dozens of incidents that have occurred across the country since the leak of the *Dobbs* decision. To date, however, we have only identified *two* cases in which the Biden Justice Department sought to protect pregnancy centers (and again the Biden DOJ scorecard for protecting churches remains at zero):

1. In *United States v. Freestone*, No. 8:23-cr-00025 (M.D. Fla.), four defendants were charged with FACE Act violations for painting threatening messages on three pregnancy centers in Florida. Three pled guilty to non-FACE Act charges and received sentences of 30 days (two defendants) and one year (one defendant). The fourth defendant is awaiting trial.
2. In *United States v. Durant*, Case No. 3:23-mj-08003 (N.D. Ohio), a single defendant pled guilty to violating the FACE Act by vandalizing a Bowling Green pregnancy center with "Jane's

<sup>24</sup> Mark Moore, *Biden's DOJ recommends no jail time for abortion activist who vandalized church, assaulted worker*, NEW YORK POST (March 13, 2023) <https://nypost.com/2023/04/13/bidens-doj-recommends-no-jail-time-for-church-vandal-report/>; Jeff Zymeri, *DOJ Recommends No Jail Time for Trans Catholic Church Vandal*, NATIONAL REVIEW, (April 12, 2023) <https://www.aol.com/news/doj-recommends-no-jail-time-153427242.html>

<sup>25</sup> Moore, *supra* note 24.

<sup>26</sup> *Id.*

Revenge"-style spray painted message threatening the center's safety and espousing hostility toward religion.<sup>27</sup> She received a sentence of probation.

Not only has the Biden Justice Department demonstrated bias in its failure to prosecute violence against pro-life and religious organizations, but it frequently presses for and secures multi-year FACE Act sentences for pro-life individuals—even when they engaged in non-violent civil disobedience. Further, for the first time in the FACE Act's history, the Biden DOJ started to tack on a "conspiracy against rights" felony charge *in addition to* FACE Act charges. The use of this Reconstruction-era law to add significant jail time for protest activity is another example of how the Biden DOJ has weaponized the FACE Act against pro-life Americans.

For example, in 2022 and 2023, the Biden administration charged 11 individuals with FACE Act violations for singing hymns and praying in a hallway leading to an abortion clinic in Tennessee in 2021,<sup>28</sup> and 10 defendants for a non-violent protest in Washington, DC,<sup>29</sup> and eight more for a non-violent protest in Michigan in 2020. Among those receiving convictions for these protests are:

- **Eva Edl** (right), an 89-year-old survivor of a Soviet concentration camp,<sup>30</sup> who passively sat in front of the entrance to an abortion clinic. Ms. Edl received a longer term of probation (3 years) for singing and praying from her wheelchair than the woman in Ohio who painted threats against the safety of a pregnancy center. Moreover, because the Biden DOJ tacked on a conspiracy charge, Edl could face a sentence of up to 11 years in federal prison along with hundreds of thousands of dollars in fines.
- **Heather Idoni**, a 60-year-old woman who received an 8-month sentence of incarceration in the Tennessee case, and a 2-year sentence for the nonviolent protest at an abortion clinic in Washington, DC.<sup>31</sup> For Idoni, prosecutors in Washington had requested a



<sup>27</sup> *BREAKING: Bowling Green Pregnancy Center Vandalized By Abortion Group*, OHIO RIGHT TO LIFE (Apr. 15, 2023), <https://ohiolife.org/breaking-bowling-green-pregnancy-center-vandalized-by-abortion-group/>.

<sup>28</sup> *United States v. Gallagher, et al.*, Case No. 3:22-cr-00327 (M.D. Tenn.).

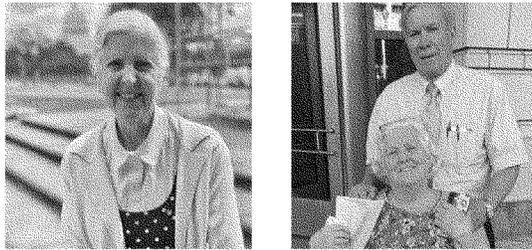
<sup>29</sup> *United States v. Handy, et al.*, Case No. 1:22-cr-00096 (D.D.C.).

<sup>30</sup> Daniel Payne, *89-Year-Old Death Camp Survivor Convicted for Pro-Life Protest Faces Jail Time*, NAT'L CATH. REG. (Aug. 21, 2024), <https://www.ncregister.com/cna/89-year-old-death-camp-survivor-convicted-for-pro-life-protest-faces-jail-time>.

<sup>31</sup> *United States v. Handy, et al.*, Case No. 1:22-cr-00096 (D.D.C.).

sentence of 41 months in prison;<sup>32</sup> they asked for a sentence of six and a half years for the organizer of the DC protest.<sup>33</sup>

- **Paul Vaughn**, father of 11, whose conduct was so benign he wasn't arrested *or even cited* on the day of the Tennessee protest, but was later arrested at gunpoint in an FBI raid at his home in front of his wife and children.<sup>34</sup> Prosecutors wanted him to spend a year in prison,<sup>35</sup> but the court sentenced him to time served.<sup>36</sup>
- **Jonathan Darnel**, who live-streamed a non-violent abortion clinic protest on Facebook, received a sentence of almost 3 years (34 months) under conspiracy charges.<sup>37</sup> The government had asked the court for a sentence of over 4 years.<sup>38</sup>
- **Jean Marshall, 74, and Paulette Harlow, 75**, both received prison sentences of 2 years for their nonviolent protest in Washington, DC.<sup>39</sup> Prosecutors had asked for sentences of 41 months for Marshall,<sup>40</sup> and 33 months for Harlow.<sup>41</sup>



<sup>32</sup> Government's Sentencing Memorandum, Dkt. No. 549, *United States v. Handy, et al.*, Case No. 22-cr-00096 (D.D.C.) (Apr. 17, 2024).

<sup>33</sup> Government's Sentencing Memorandum, Dkt. No. 543, *United States v. Handy, et al.*, Case No. 22-cr-00096 (D.D.C.) (Apr. 12, 2024).

<sup>34</sup> EWTN, *FBI Raids Home of Another Pro-Life Father, Paul Vaughn, in Front of His Family*, EWTN NEWS NIGHTLY (Oct. 13, 2022), <https://www.youtube.com/watch?v=Q2lC8odAcL8>.

<sup>35</sup> Government's Sentencing Memorandum, Dkt. No. 633, *United States v. Gallagher, et al.*, Case No. 22-cr-00327 (M.D.Tenn.) (Apr. 17, 2024).

<sup>36</sup> Judgment, Dkt. No. 667, *United States v. Gallagher, et al.*, Case No. 22-cr-00327 (M.D.Tenn.) (Jul. 8, 2024).

<sup>37</sup> *United States v. Handy, et al.*, Case No. 1:22-cr-00096 (D.D.C.).

<sup>38</sup> Government's Sentencing Memorandum, Dkt. No. 541, *United States v. Handy, et al.*, Case No. 22-cr-00096 (D.D.C.) (Apr. 12, 2024).

<sup>39</sup> *United States v. Handy, et al.*, Case No. 1:22-cr-00096 (D.D.C.).

<sup>40</sup> Government's Sentencing Memorandum, Dkt. No. 542, *United States v. Handy, et al.*, Case No. 22-cr-00096 (D.D.C.) (Apr. 12, 2024).

<sup>41</sup> Government's Sentencing Memorandum, Dkt. No. 540, *United States v. Handy, et al.*, Case No. 22-cr-00096 (D.D.C.) (Apr. 12, 2024).

- **Mark Houck** was charged with a FACE Act violation in Philadelphia after a minor altercation with a clinic escort who had got into Mark's 12-year-old son's personal space and yelled obscenities at him. He offered to appear voluntarily, but the FBI sent "twenty heavily armed federal agents to the Houck residence at dawn" to arrest him.<sup>42</sup> The local and state prosecutors both declined to prosecute but the Biden DOJ proceeded with its federal case anyway. Ultimately, Mr. Houck was acquitted by a jury at his trial, at which the federal judge—an Obama appointee—asked the prosecution whether the FACE Act wasn't being "stretched a little thin here."<sup>43</sup>




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### Pregnancy Centers are Targeted by State Attorneys General

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The FACE Act was intended to ensure that pregnancy centers remain free to serve women, men, and children without intimidation, harassment, or violence. It explicitly allows state Attorneys General to use its provisions to protect pro-life pregnancy centers and churches. Ironically, instead of using their authority under the FACE Act to protect pregnancy centers and houses of worship, many state Attorneys General harass and intimidate these centers in a blatant attempt to silence their pro-life speech.

Shortly after the *Dobbs* decision, 16 state Attorneys General signed an open letter threatening pregnancy centers with various state enforcement actions.<sup>44</sup> The Attorneys General expressed "concern" that pregnancy centers existed in their states at all, and especially that these pro-life centers outnumber abortion clinics 3-to-1. They alleged that—because the centers don't perform abortions—they mislead consumers. The Attorneys General even applauded the efforts of Yelp to place a "consumer notice" on the speech of pregnancy care centers. And they pledged to continue

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<sup>42</sup> Brittany Bernstein, *Pro-Life Activist Arrested by FBI Acquitted on Federal Charges*, NATIONAL REVIEW (Jan. 30, 2023), <https://www.nationalreview.com/news/pro-life-activist-arrested-by-fbi-acquitted-on-federal-charges/> (quoting Thomas More attorney Peter Breen).

<sup>43</sup> Joe Bukuras, *Prosecution rests case in Mark Houck trial, defense motions to dismiss the case*, CATHOLIC NEWS AGENCY (Jan. 26, 2023), <https://www.catholicnewsagency.com/news/253474/prosecution-rests-case-in-mark-houck-trial-defense-motions-to-dismiss-the-case>.

<sup>44</sup> Attorney General Rob Bonta, et al., *Open Letter from Attorneys General Regarding CPC Misinformation and Harm* (Oct. 23, 2023), available at <https://oag.ca.gov/system/files/attachments/press-docs/Open%20Center%20Crisis%20Pregnancy%20Centers%20FINAL.pdf>.

to take “numerous actions” to impede pro-life pregnancy centers from speaking about the harms of abortion.

These were not idle threats. A number of Attorneys General have made good on their promise to do what they can to shut pregnancy centers’ doors and silence their speech.

**Washington State:** In May of 2022, Washington State Attorney General Bob Ferguson issued civil investigative demands (CIDs) to the Obria Group and Obria Pacific Northwest.<sup>45</sup> The Obria Group is a network of pro-life medical clinics that provide comprehensive and compassionate care, such as ultrasounds, well-woman care, prenatal care, STD/STI testing and treatment, and abortion pill reversal.<sup>46</sup> Obria Pacific Northwest is a group of three clinics in the Obria network. Despite failing to identify a single patient complaint, or any purported violation of state law, Attorney General Ferguson investigated what he called “possible” deceptive marketing and “possible” unfair collection and use of consumer data.

He demanded that Obria produce an absurd amount of information, including over a decade’s worth of information relating to donors, volunteers, and employees. The Attorney General’s aggressive investigation caused Obria’s insurance costs to skyrocket and its vendors to question their relationship with Obria. Obria was compelled to spend precious resources on compliance with the frivolous investigation, resources it would otherwise have used to support women facing unplanned pregnancies. Even after Obria provided over 1,500 pages of responsive documents, the Attorney General’s office continued to demand further documentation.

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<sup>45</sup> *Washington AG Folds, Ends Illegal Investigation of Pro-Life Pregnancy Centers*, ALLIANCE DEFENDING FREEDOM (Nov. 30, 2023), <https://adfflegal.org/article/washington-ag-folds-ends-illegal-investigation-pro-life-pregnancy-centers/>.

<sup>46</sup> Abortion pill reversal (APR) is the use of progesterone supplements to counter the effects of a chemically induced abortion. There is a time period after women take the first abortion drug (mifepristone) and before they take the second drug (misoprostol) that they can try to reverse the effects of the abortion process, potentially saving their baby’s life. Statistics show that APR has likely saved over 5,000 unborn lives and has a 64-68% success rate. APR has given countless women who regretted taking the first drug a chance to save their baby. For example, Atonia Foley of California remembered seeing a sign for abortion pill reversal after she began to experience deep regret over taking the first abortion drug. She went on the internet, found an abortion-pill-reversal hotline, and was connected with National Institute of Family and Life Advocates (NIFLA) member Alternatives Pregnancy Center in Sacramento, California. Atonia soon gave birth to a healthy baby girl. You can watch Atonia’s full story here: <https://youtu.be/UGjYBXL2uwo?si=Lx-AxgyuzfHmYjGl>.

It was only after Alliance Defending Freedom filed a lawsuit against Attorney General Ferguson—alleging that his CIDs were overbroad and a retaliatory effort to silence pro-life speech—that the Attorney General backed down, formally closing the investigation.<sup>47</sup>

**California:** In September 2023, California Attorney General Rob Bonta sued Heartbeat International (a national network of pregnancy centers) and RealOptions Obria (which has five pregnancy centers in California) for publishing information about abortion pill reversal.<sup>48</sup> The suit threatens punishment—including fines of up to \$2,500—for promoting and offering services that can save lives through APR. The Attorney General’s lawsuit is an unconstitutional attempt to censor potentially life-saving information. California is trying to keep women from finding out about a medical option that gives their unborn children a second chance at life.

Because pregnancy centers in California that have made similar statements are also at risk of being targeted for litigation, Alliance Defending Freedom filed a lawsuit against Attorney General Bonta on behalf of the National Institute of Family and Life Advocates (NIFLA) and SCV Pregnancy Center.<sup>49</sup>

**New Jersey:** In November 2023, New Jersey Attorney General Matthew Platkin targeted First Choice Women’s Resource Center because of its religious and pro-life views by issuing a baseless subpoena.<sup>50</sup> First Choice is a faith-based pregnancy center network providing medical services in New Jersey, serving women and families facing unplanned pregnancies. They provide ultrasounds to confirm pregnancy, STD/SIT testing, educational resources, and material resources, like baby clothes, maternity clothes, and food.

The Attorney General has made no secret of his animus against religious pregnancy centers like First Choice. He has referred to pro-life groups as “extremists” and promised to “use all legal tools” to further his pro-abortion agenda. He issued a consumer alert warning New Jerseyans about pregnancy centers and steering them to places like Planned Parenthood instead. The Attorney General even asked Planned Parenthood to edit his draft of the consumer alert.

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<sup>47</sup> *Id.*

<sup>48</sup> *California pro-life pregnancy centers sue AG for censoring their speech*, (Oct. 2, 2024), <https://adfmedia.org/case/national-institute-family-and-life-advocates-v-bonta>.

<sup>49</sup> *Id.*

<sup>50</sup> *ADF to 3rd Circuit: Stop New Jersey AG’s Harassment of Pro-Life Ministry*, ALLIANCE DEFENDING FREEDOM (Dec. 9, 2024), <https://adfmedia.org/case/first-choice-womens-resource-centers-v-platkin>.

Without identifying a single complaint from the public, the Attorney General demanded First Choice disclose constitutionally protected information—such as the names of its donors, staff, and volunteers—as well as provide communications with other pro-life organizations. This overbroad demand to dig up ten years of documentation drains resources that would otherwise be used to serve women, men, and children. And it flies in the face of clear holdings from the U.S. Supreme Court that donor information is constitutionally protected and may only be obtained upon an extraordinary showing.

That’s why Alliance Defending Freedom is defending First Choice, so it can continue to provide resources to women in their community without unjust government harassment.

**New York:** In May of 2024, New York Attorney General Letitia James sued eleven faith-based, pro-life pregnancy centers in the state and a network of affiliated pregnancy centers for claiming that abortion pill reversal was safe and effective.<sup>51</sup> Attorney General James is seeking an injunction, damages, civil penalties, and attorney’s fees—all of which would have a chilling effect on the speech and life-saving work of these organizations. The lawsuit denies women potentially life-saving information and essentially forces them to follow through with an abortion—even if they don’t want to. But the First Amendment forbids government officials from picking sides in a political debate; they can’t censor or shut down pregnancy centers for speaking about life-saving care.

Alliance Defending Freedom sued Attorney General James on behalf of several other pregnancy centers arguing that New York’s actions censor pro-life pregnancy centers because they tell women about the option of abortion pill reversal. A federal district court agreed and issued a preliminary injunction against Attorney General James. The court compared her efforts to silence pro-life pregnancy centers to the dystopian “Ministry of Truth” in George Orwell’s *1984*, and added, “freedom of speech and thought ‘flows not from the beneficence of the state but from the inalienable rights of the person.’”<sup>52</sup>

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<sup>51</sup> *Court halts NY attorney general from violating pregnancy centers’ freedom of speech*, ALLIANCE DEFENDING FREEDOM (Aug. 22, 2024), <https://adfmmedia.org/case/national-institute-family-and-life-advocates-v-james>.

<sup>52</sup> *NIFLA v. James*, Case No. 24-cv-514, Preliminary Injunction Order at 2 (W.D.N.Y. Aug. 22, 2024), available at <https://adfmlegalfiles.blob.core.windows.net/files/NIFLA-James-Ruling.pdf>.

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**The FACE Act is Constitutionally Suspect Because of its Biased Application  
and Lack of Firm Constitutional Basis.**

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**I. The Biden DOJ's Application of the FACE Act Raises Concerns of Viewpoint-Based Enforcement.**

The First Amendment prohibits government discrimination on the basis of viewpoint. While the Executive Branch has discretion to decide whether to prosecute a case, it “cannot selectively enforce the law in a way that violates the Constitution.” *Frederick Douglass Found., Inc. v. D.C.*, 82 F.4th 1122, 1137 (D.C. Cir. 2023). Prosecutorial discretion, in other words, “is not unfettered.” *Wayte v. United States*, 470 U.S. 598, 608 (1985) (cleaned up). The government may not decide whether or not to prosecute someone based on “unlawful favoritism.” *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 325 (2002).

“[S]elective enforcement of a neutral and facially constitutional law may run afoul of the First Amendment if the government’s prosecutorial choices turn on the content or viewpoint of speech.” *Frederick Douglass Found.*, 82 F.4th at 1141. Such viewpoint-based prosecution “is antithetical to a free society.” *Id.* The government cannot give “one side of a debatable public question an advantage in expressing its views to the people.” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 785 (1978).

The Biden administration’s unequal enforcement of the FACE Act targeting pro-life advocates raises the specter of selective enforcement. Despite the alarming number of attacks on pregnancy centers and houses of worship, the Biden administration has largely looked the other way. Instead, it has almost exclusively targeted pro-life individuals. This is no happenstance, but appears to be a direct order from the highest levels at the Department of Justice.

In short, the Biden DOJ has “consistently declined” to enforce the FACE Act against individuals attacking pregnancy centers and churches “while vigorously enforcing” the Act against pro-life advocates. *Frederick Douglass Found.*, 82 F.4th at 1140. This selective enforcement likely violates the First Amendment.

## II. The FACE Act is a Questionable Exercise of Congress's Commerce Clause Authority.

In addition to the history of viewpoint-based enforcement, the FACE Act gives rise to other serious constitutional concerns. Every statute enacted by Congress “must be based on one or more of its powers enumerated in the Constitution.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). As Chief Justice Marshall explained long ago: “The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written.” *Marbury v. Madison*, 1 Cranch 137, 176, 2 L.Ed. 60 (1803) (Marshall, C. J.). Nothing in the text or history of the constitutional authorization to Congress to regulate “interstate commerce” establishes that Congress may regulate purely local intrastate activity like trespassing on a church or clinic’s property. Quite the opposite. As a matter of text and history, the FACE Act is an unconstitutional exercise of Congressional power.

Modern-day Commerce Clause jurisprudence has expanded far beyond the traditional interstate activities subject to regulation at the Founding. But even under the more recent, more expanded interpretations of the Commerce Clause, the FACE Act is a stretch. The Supreme Court has held that there are three categories under which Congress may regulate intrastate activities. “First, Congress may regulate the use of the channels of interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558 (1995). “Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities.” *Id.* Third, Congress may regulate activities “that substantially affect interstate commerce.” *Id.* at 558–559. Only the third category is at issue for the FACE Act.

While broad, Congress’s power under the Commerce Clause is not unlimited. In *United States v. Lopez*, for instance, the Supreme Court held that a statute making it a federal crime to knowingly possess a firearm in a school zone exceeded Congress’s Commerce Clause authority. The Court paid special attention to the fact that the federal statute was “a criminal statute that by its terms has nothing to do with ‘commerce’ or any sort of economic enterprise, however broadly one might define those terms.” *Id.* at 561. The Court explained that its Commerce Clause cases had upheld the regulation of “intrastate economic activity” where it “substantially affected interstate commerce.” *Id.* at 559.

The Court rejected the United States' claim that the possession of guns could lead to violent crime which would affect the national economy. The "costs of crime" argument was too attenuated and would permit Congress to regulate any "activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example." *Id.* at 564. Such a theory would provide for limitless federal authority, "even in areas such as criminal law enforcement or education where States historically have been sovereign." *Id.* If the Court were to accept the government's argument, it would be "hard pressed to posit any activity by an individual that Congress is without power to regulate." *Id.* In sum, a "fair reading of *Lopez* shows that the noneconomic, criminal nature of the conduct at issue was central" to the Court's decision in that case." *Morrison*, 529 U.S. at 610.

The *Lopez* Court also found it important that Section 922(q) contained "no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce." 514 U.S. at 562.

Similarly, in *United States v. Morrison*, the Supreme Court invalidated the Violence Against Women Act as exceeding Congress's Commerce Clause authority. The *Morrison* Court reiterated that when the Court had "sustained federal regulation of intrastate activity based upon the activity's substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor." 529 U.S. at 611. The Court rejected the government's argument that violence against women could deter interstate travel and reduce national productivity. By the Court's lights, that argument would "completely obliterate the Constitution's distinction between national and local authority." As a result, the Court "reject[ed]" the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." *Id.* at 608. To the contrary, the "Constitution requires a distinction between what is truly national and what is truly local." *Id.* at 617-18.

The FACE Act is a federal criminal statute that regulates noneconomic activity. The intentional vandalizing or destruction of a facility that provides reproductive health services is not a commercial activity. See *United States v. Bird*, 124 F.3d 667, 675 (5th Cir. 1997). While Congress could have ensured that the FACE Act reach only activities affecting interstate commerce by including a jurisdictional element, it did not do so.

*Lopez* and *Morrison* rejected the but-for causation argument that Congress may regulate any crime so long as it has a nationwide aggregate effect on some sort of economic activity. As the *Morrison* Court explained: that reasoning “seeks to follow the but-for causal chain from the initial occurrence of violent crime (the suppression of which has always been the prime object of the States’ police power) to every attenuated effect upon interstate commerce.” 529 U.S. at 615. And if accepted, Congress could “regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit, or consumption.” *Id.* Needless to say, the federal government does not possess a general police power. “Under our federal system, the States possess primary authority for defining and enforcing the criminal law.” *Lopez*, 514 U.S. at 561 n. 3 (cleaned up).

Under these cases, it is doubtful that Congress has the authority to regulate the noneconomic criminal activity prescribed by the FACE Act “based solely on that conduct’s aggregate effect on interstate commerce.” *Morrison*, 529 U.S. at 617.

This does not mean that trespass or other criminal conduct directed at houses of worship, abortion facilities, or pregnancy resource centers may occur with impunity and without legal consequences, but these actions are quintessentially within the authority of the state and local governments to regulate—not Congress.

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### The FACE Act Should be Repealed

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#### I. **The FACE Act should be repealed because it has been weaponized to target pro-life activity while leaving pregnancy centers and churches largely unprotected.**

As explained above, the Biden administration’s implementation of the FACE Act has been one-sided, raising legitimate concerns about selective enforcement. The Administration has used the FACE Act almost exclusively to go after pro-life advocacy. In fact, 92% of all Biden-Harris FACE Act cases were brought against pro-life advocates. This, despite the fact that hundreds of churches and pregnancy centers have been attacked and vandalized since the leak of the *Dobbs* opinion. This is not the even-handed application of the law the American people deserve.

To make matters worse, the FACE Act’s superpower—and why it is such a potent weapon in the wrong hands—is the way it turns traditional state crimes, like trespass and disorderly conduct,

into federal felonies.<sup>53</sup> Were this not enough, the Biden DOJ has resorted to another federal statute—the conspiracy to violate rights statute—to up the ante and place pro-life advocates in as much jeopardy as possible. And indeed, the Biden administration has sought and obtained multi-year sentences for non-violent pro-life protests. Once again, the law has been unequally applied to pro-abortion advocacy. In the two cases in which the FACE Act was used to prosecute attacks on pregnancy centers, the maximum sentence obtained was one year in prison. Other defendants walked away with either probation or a 30-day sentence.

Every state, moreover, has laws that regulate trespass, assault, disorderly conduct, unlawful assembly, and the like. The Supreme Court has explained that Congress has historically “been reluctant to define as a federal crime conduct readily denounced as criminal by the States.” *United States v. Enmons*, 410 U.S. 396, 411 (1973). This is because for Congress to criminalize activity that’s already the subject of state regulation “significantly change[s] the federal-state balance.” *Id.*

The authority to enact criminal law is fundamental to the States’ “residuary and inviolable sovereignty.” The Federalist No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison). In fact, “[f]rom the beginning of our country, criminal law enforcement has been primarily a responsibility of the States.” *Kansas v. Garcia*, 589 U.S. 191, 212 (2020). As the Supreme Court recently put it, “the States possess primary authority for defining and enforcing the criminal law.” *Shinn v. Ramirez*, 596 U.S. 366, 376 (2022) (quoting *Engle v. Isaac*, 456 U.S. 107, 128 (1982)). This primary authority extends from the gravest of crimes down to the typical protest activity covered by the FACE Act, because, unlike Congress, a state “does not need . . . a jurisdictional hook” to regulate criminal activity. *Torres v. Lynch*, 578 U.S. 452, 458 (2016)

To be clear, there’s never any excuse for violence in expressing one’s viewpoint. But that doesn’t mean every protest is a federal crime. With respect to the FACE Act, members of Congress have “noted that state statutes, including criminal trespass, criminal contempt, disorderly conduct, resisting arrest, and unlawful assembly are more than adequate to address the activities sought to be

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<sup>53</sup> There are a few different thresholds for FACE Act violations. For a first offense, a person may be sentenced to up to one year in prison and a \$250,000 fine, for a second or subsequent offense, a person may be sentenced to up to three years and a \$250,000 fine. Except if the offense involves exclusively nonviolent physical obstruction, the jail term is limited to six months plus a \$10,000 fine for the first offense, and eighteen months in jail plus a \$25,000 fine for a second or subsequent offense. If any injury results, the potential sentence increases to ten years in prison, plus the \$250,000 fine. If death results, a defendant may receive any term of years or life in prison.

regulated by FACE.” *U.S. v. Bird*, 401 F.3d 633, 636 (5th Cir. 2005) (DeMoss, J., dissenting) (citing H.R.REP. NO. 103-306, at 22 (1993), *reprinted in* 1994 U.S.C.C.A.N. 699, 717).

In short, the FACE Act has been weaponized against one side of a public debate about abortion. It is on shaky constitutional ground and has been unevenly applied. It imposes massive federal penalties for traditional state law crimes and thus displaces states from their primary role in enforcing criminal law. For all of these reasons, the FACE Act should be repealed.



## Erin Morrow Hawley

SENIOR COUNSEL, VICE PRESIDENT OF THE CENTER  
FOR LIFE & REGULATORY PRACTICE

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Erin Morrow Hawley serves as senior counsel and vice president of the Center for Life and regulatory practice at Alliance Defending Freedom. Before joining ADF, Hawley practiced appellate law at Kirkland and Ellis LLP, Bancroft LLP, and King & Spalding LLP, all in Washington, D.C. Hawley has litigated extensively before the U.S. Supreme Court as well as numerous federal courts of appeals and state courts of last resort. She also worked at the Department of Justice, serving as counsel to Attorney General Michael Mukasey.

As an academic, Hawley served as an associate professor of law at the University of Missouri where she taught constitutional litigation, federal income tax, tax policy, and agricultural law. She also taught constitutional law as a senior fellow at the Kinder Institute for Constitutional Democracy. Her scholarship focuses primarily on federal courts and has been published in numerous top journals.

Hawley is a frequent commentator on legal issues. Her work has been quoted or featured in the Washington Post, US News, USA Today, Fox News, the Washington Examiner, the Legal Times, and the Hill, among others. Hawley has also written a book on motherhood, entitled “Living Beloved: Lessons From My Little Ones About the Heart of God.”

Hawley is a former law clerk to U.S. Supreme Court Chief Justice John G. Roberts and Judge J. Harvie Wilkinson of the U.S. Court of Appeals for the Fourth Circuit. Hawley received her bachelor’s degree in Animal Science from Texas A&M University and her law degree from Yale Law School where she served as a Coker Fellow in Constitutional Law and on the Yale Law Journal. Hawley is an active member of the Missouri and District of Columbia bars and is admitted to practice before the U.S. Supreme Court and various federal courts of appeals.

Mr. ROY. Thank you, Ms. Hawley.  
Mr. Crampton, you may provide your testimony.

**STATEMENT OF STEPHEN M. CRAMPTON**

Mr. CRAMPTON. Good afternoon.

Mr. Chair, the Ranking Member, and the Members of the Subcommittee, thank you for allowing us the opportunity to testify here today.

My name is Steve Crampton. I serve as Senior Counsel for the Thomas More Society, a national nonprofit law firm championing life, family, and freedom.

I applaud this Committee for addressing this vital issue—as the title of this Subcommittee suggests, the Constitution and limited government, both of which are keenly implicated in this issue.

FACE should be repealed, as Ms. Hawley just said, first, because it's an unconstitutional law and, second, because it's an unnecessary Federal overreach into a matter traditionally and best left to the States.

I also urge this Committee, however, to take action regarding the use and abuse of the Ku Klux Klan Conspiracy Against Rights Statute passed in 1870, which has for the first time in our Nation's history been pressed into service for use against these peaceful FACE protesters.

People like Mr. Vaughn and the others, many of whom, as has been mentioned, are already in jail today, face that penalty that goes up from six months for a first offense, nonviolent FACE violation, to 10 years in the Federal penitentiary.

This is an outrage, and it should not be permitted. Historically, FACE was always about one thing, abortion. The legislative history, the drafts of the early bill make this quite clear, as does the use and abuse of the FACE Act throughout its 30-year history.

Moreover, FACE purports to prohibit intimidation of people on the basis of their views on abortion, whichever side they might take. The weaponized Department of Justice and its Gestapo-like FBI are using FACE itself to intimidate and silence peaceful prolife advocates.

It is the government, not the peaceful advocates like Paul Vaughn, who are doing the intimidating here. Furthermore, since the historic *Dobbs* decision June 2022, reversing *Roe* there's no longer any pretense of abortion being a Federal right. Because the reason for the law has ceased to exist FACE itself should cease to exist. It should be repealed.

Instead of the DOJ lessening its use of the FACE Act after *Dobbs*, what the Biden Administration has done is increase dramatically, perhaps a hundred fold, its application.

Only after *Dobbs* was decided did they begin rounding up proliferators all around the country for incidents that had occurred years before *Dobbs* was even decided and they've thrown the proverbial book at them.

Many of these peaceful proliferators will spend Christmas next week away from their families behind bars in a Federal penitentiary simply because they peacefully sought to interpose on behalf of helpless babies facing a most horrific and violent dismembering and death by abortion.

While those who sought to protect babies in any means now are at risk under this administration regardless of their proximity to an abortion clinic, pro-abortion zealots who fire bomb churches and pregnancy resource centers are left free to carry on their campaign of terror at will even though churches and the PRCs are theoretically protected under FACE, too.

Moreover, FACE was carefully crafted from its inception to criminalize only one side of the abortion debate, namely the prolife. This viewpoint bias in FACE is seen all too clearly when contrasting the cases of two of our clients, Mark Houck, who was already mentioned here, and Mark Crosby.

This Subcommittee heard from Mark Houck how he was arrested at gunpoint in front of his wife and children. Ended up facing several years in the Federal penitentiary for two violations that were charged to FACE.

Thankfully, he won at trial but only after going through the entire process. Contrast that case with that of Mark Crosby, 73-year-old prolife advocate brutally beaten on May 26, 2023, by a pro-abortion zealot outside of Planned Parenthood clinic in Baltimore, Maryland.

Although Mr. Crosby offers counseling on so-called reproductive health services, it should otherwise qualify for protection under FACE, guess what?

His assailant is free from any FACE prosecution because they carefully defined what constitutes a reproductive health service and the counseling protected thereunder to be connected only to a facility. Because Mr. Crosby is on the sidewalk he had gotten no protection.

What we have here is an out-of-control Department of Justice. The rule-of-law mentioned by Ms. Hawley has suffered and it may prove to be a mortal wound. This two-tiered system of justice must end.

Thank you. I look forward to your questions.  
[The prepared statement of Mr. Crampton follows:]



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**Written Testimony of**  
**Stephen M. Crampton, Senior Counsel**  
**Thomas More Society**  
**Before the Subcommittee on the Constitution and**  
**Limited Government of the Committee on the Judiciary**  
**December 18, 2024**

Chairman Roy, Ranking Member Scanlon, and Members of the Subcommittee, I am Stephen Crampton, Senior Counsel for the Thomas More Society, a national non-profit public interest law firm championing life, family, and freedom. Thank you for the opportunity to testify here today.

**FACE WAS ALWAYS ABOUT ABORTION.**

The Freedom of Access to Clinic Entrances Act (“FACE”) was from its inception always about abortion. Its impetus was the Supreme Court’s decision in *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263 (1993), decided January 13, 1993. *Bray* held that abortion clinics and abortion rights organizations could not use the civil Conspiracy to Interfere with Civil Rights statute, 42 U.S.C. § 1985(3), to enjoin pro-life demonstrators from obstructing access to abortion clinics because opposition to abortion was not akin to race discrimination and so did not qualify as an “otherwise class-based, invidiously discriminatory animus [underlying] the conspirators’ action,” which Supreme Court precedent required.

The High Court further held that the abortion clinics’ claim could not be based on the “right to abortion” because that right – since overturned by *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022) – protected only against state interference, not private interference.

In response to the Supreme Court’s holding in *Bray*, Senator Ted Kennedy introduced the FACE Act only two months later, on March 23, 1993.<sup>1</sup> As introduced,

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<sup>1</sup> See Senate Bill 636 -- Freedom of Access to Clinic Entrances Act of 1994, 103rd Congress

the bill recited in its Statement of Findings and Purpose that “in the *Bray* decision, the Court denied a remedy under such section [42 U.S.C. § 19875(3)] to persons injured by the obstruction of access to abortion services” and that “legislation is necessary to prohibit the obstruction of access by women to abortion services.”<sup>1</sup>

The bill’s stated purpose was “to protect and promote the public health and safety by prohibiting the use of force, threat of force or physical obstruction to injure, intimidate or interfere with a person seeking to obtain or provide **abortion services**, and the destruction of property of facilities providing **abortion services** . . .”<sup>2</sup>

Similarly, the operative section setting forth the prohibited conduct (which eventually became Sec. 248(a)(1) and (2)) explicitly referred to abortion:

(a) Prohibited Activities.--Whoever—

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons, from—

- (A) obtaining abortion services; or
- (B) lawfully aiding another person to obtain **abortion services**; or

(2) intentionally damages or destroys the property of a medical facility or in which a medical facility is located, or attempts to do so, **because such facility provides abortion services**,

shall be subject to the penalties provided in subsection (b) and the civil remedy provided in subsection (e).”<sup>3</sup>

Again, the testimony and evidence introduced to establish the need for the bill pertained exclusively to abortion. As reported out of the Senate Committee on Labor and Human Resources on July 29, 1993, Section IV, entitled “NEED FOR THE LEGISLATION,” explained:

<sup>1</sup> S. 636, Section 2(a).

<sup>2</sup> *Id.* at Section 2(b) (emphasis added).

<sup>3</sup> *Id.* at Section 3 (emphasis added).

A nationwide campaign of **anti-abortion blockades**, invasions, vandalism and outright violence is barring access to **facilities that provide abortion services** and endangering the lives and well-being of the health care providers who work there and the patients who seek their services. This conduct is interfering with the exercise of **the constitutional right of a woman to choose to terminate her pregnancy**, and threatens to exacerbate an already severe shortage of qualified providers available to perform safe and legal **abortions** in this country.<sup>4</sup>

There was no mention of protecting the right of access to places of religious worship until Senator Hatch offered a last-minute amendment to the bill. It was essentially an afterthought.

That explicit reference to “abortion services” was later modified to “reproductive health services” in the final bill does not alter the fact that it was always primarily about abortion.

**There is no federal right to abortion, and because the reason for FACE has ceased, FACE itself should cease to exist.**

In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Supreme Court overruled *Roe v. Wade*<sup>5</sup> and *Planned Parenthood of Southeastern Pa. v. Casey*<sup>6</sup> and declared that there is no federal right to abortion. “We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment.” 597 U.S. at 231.

There is therefore no federal constitutional right to abortion, and the very reason for FACE’s existence no longer exists. Under the well-established doctrine of *cessante ratione legis, cessat ipsa lex*, “when the reason for a law ceases, the law itself ceases,”<sup>7</sup> FACE should be repealed.

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<sup>4</sup> S. REP. 103-117, 50 (1993) (emphasis added).

<sup>5</sup> 410 U.S. 113 (1973).

<sup>6</sup> 505 U.S. 833 (1992).

<sup>7</sup> See, e.g., *United States v. Manton*, 107 F.2d 834, 845 (1938); *Pipefitters Loc. Union No. 562 v. United States*, 407 U.S. 385, 432 (1972).

**FACE is an unconstitutional content-based restriction on speech.**

Moreover, FACE has not only lost its purpose, it has also lost its constitutional validity. Under the Supreme Court’s more recent precedents on content-based laws, FACE is plainly unconstitutional because it discriminates against expressive activity based on content and/or viewpoint.

As the actions of Paul Vaughn and the other FACE defendants convicted under the Biden regime make clear, they were engaged in quintessential expressive activity such as praying, singing hymns, and speaking to the police and would-be customers of the abortion clinics. The First Amendment protects expressive conduct just as it protects pure speech.<sup>8</sup>

Under the analysis set forth in *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015), FACE is an impermissible content-based restriction on speech. *Reed* counsels that a law is content based on its face if it “target[s] speech based on its communicative content;” that is, it “applies to particular speech because of the topic discussed or the idea or message expressed.” 576 U.S. at 163; *see also McCullen v. Coakley*, 573 U.S. 464 (2014): a statute “would be content based if it required ‘enforcement authorities’ to ‘examine the content of the message that is conveyed to determine whether’ a violation has occurred.” *Id.* at 479 (quoting *F.C.C. v. League of Women Voters of California*, 468 U.S. 364, 383 (1984)).

FACE does precisely that: It does not prohibit *all* acts of obstruction of individuals seeking access to reproductive health care facilities, but only those undertaken *because* that individual is “obtaining or providing reproductive health services.” 18 U.S.C. § 248(a)(1) (emphasis added). It targets one particular motive, namely the pro-life motive, and thus requires the authorities to inquire into the content of any message the perpetrator might wish to communicate to determine whether a violation has occurred.

The Senate was clear in its discussions and careful in its drafting to specifically *exclude* certain actors from the reach of FACE:

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<sup>8</sup> *See, e.g., Texas v. Johnson*, 491 U.S. 397, 404 (1989) (the protection of the First Amendment “does not end at the spoken or written word”; conduct, too, “may be sufficiently imbued with elements of communication to fall within the scope” of the First Amendment); *Brown v. Louisiana*, 383 U.S. 131, 141-42 (1966) (the Supreme Court “has repeatedly stated, these rights are not confined to verbal expression. They embrace appropriate types of action . . .”).

Thus, for example, if an environmental group blocked passage to a hospital where abortions happen to be performed, **but did so as part of a demonstration over harmful emissions produced by the facility**, the demonstrators **would not violate this Act** (though their conduct might violate some other law, such as a local trespass law). In that example, **the demonstrators' motive** is related to the facility's emissions policy and practices and **not** to its policy and practices on abortion-related services. **The Committee has concluded that inclusion of the motive elements is important to ensure that the Act is precisely targeted at the conduct that, as the Committee's record demonstrates, requires new Federal legislation; deliberate efforts to interfere with the delivery of abortion-related services.**<sup>9</sup>

FACE is therefore content based.<sup>10</sup>

**A tale of two cases: Mark Houck and Mark Crosby.**

*Mark Houck case – FACE applies.*

This Subcommittee has heard the testimony of our former client Mark Houck, who, like Paul Vaughn, was arrested at gunpoint in front of his wife and small children for an alleged violation of FACE. In Mark's case, he was alleged to have physically assaulted a pro-abortion "escort", B.L., on the sidewalk near an abortion clinic "because B.L. was and had been providing reproductive health services."<sup>11</sup> Although thankfully Mark Houck was found not guilty after a jury trial, the Biden Administration's Indictment was valid because Mark Houck's pro-life viewpoint was plausibly alleged to have been his motivation for engaging with B.L.

FACE was carefully crafted to target only pro-life advocates. Under FACE, "reproductive health services" are narrowly defined to include only those services provided in a facility:

<sup>9</sup> S.Rep. No. 103-117, 103rd Cong., 1st Sess. 24 (1993) (emphasis added).

<sup>10</sup> A content-based restriction on speech is subject to strict scrutiny review, which requires that it be the least-restrictive means available to serve a compelling government interest. *E.g.*, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). The standard is a difficult one; "we readily acknowledge that a law rarely survives such scrutiny. . .". *Burson v. Freeman*, 504 U.S. 191, 199-200 (1992). FACE would not survive strict scrutiny. The Government cannot begin to articulate even a legitimate interest for extending special protection for access to "reproductive health services" after *Dobbs*, let alone a compelling one.

<sup>11</sup> Indictment, ¶ 6, *United States v. Houck*, U.S. District Court, E.D. PA, No. 2:22-cr-323.

The term “reproductive health services” means reproductive health services **provided in a hospital, clinic, physician's office, or other facility**, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

18 U.S.C. § 248(e)(5) (emphasis added).

Because the pro-abortion “escort” was affiliated with the nearby Planned Parenthood facility, he was presumably protected under FACE.

*Mark Crosby case – FACE does not apply.*

But contrast that with the case of another Thomas More Society client, Mark Crosby, a 73-year-old pro-life advocate who was brutally beaten on May 26, 2023 by a pro-abortion zealot outside a Planned Parenthood abortion clinic in Baltimore, Maryland.<sup>12</sup> While Mr. Crosby’s prayers and efforts to peacefully and lawfully interpose on behalf of innocent children being killed at the clinic may constitute “counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy” under FACE, they are not connected to a “facility” and therefore Mr. Crosby is not protected under the Act.

Thus, while Mark Houck was subjected to a SWAT-like arrest and was forced to undergo harsh prosecution and a jury trial in federal court, facing serious penalties under FACE, Mark Crosby’s assailant cannot be prosecuted under FACE.

FACE is and was always intended to operate solely against pro-life individuals. As such, it is an unconstitutional content-based restriction on speech.

**FACE is Unconstitutional as Applied Because it has Been Selectively Enforced on the Basis of Viewpoint Discrimination.**

Although the Government has broad discretion in enforcing criminal laws, a

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<sup>12</sup> See “Baltimore police investigating reported vicious assault on pro-life activists outside Planned Parenthood,” Fox News, May 31, 2023, <https://www.foxnews.com/us/baltimore-police-investigating-reported-vicious-assault-pro-life-activists-planned-parenthood>. Mr. Crosby was at the abortion clinic to pray, but when the assailant attacked another 80-year-old pro-life advocate Mr. Crosby attempted to intervene, and was then assaulted himself.

“prosecutor’s discretion is ‘subject to constitutional constraints.’” *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (quoting *United States v. Batchelder*, 442 U.S. 114, 125 (1979)). One such constraint is that the Government may not enforce a law based on its “disapproval of a subset of messages it finds offensive,” because “[t]his is the essence of viewpoint discrimination.” *Matal v. Tam*, 582 U.S. 218, 248 (2017) (Kennedy, J., concurring in part). Yet that is what the Biden Administration has done here.

As this Subcommittee knows, FACE in theory protects churches and pregnancy resource centers in the same way it protects abortion facilities. But the Biden Administration has refused to prosecute almost any of the perpetrators of the hundreds of attacks on churches and pro-life pregnancy resource centers since the Supreme Court announced the *Dobbs* decision in 2022.

The most recent data shows that since the *Dobbs* decision was leaked in early May 2022, there have been 95 attacks on pregnancy resource centers and pro-life groups,<sup>13</sup> including firebombings and some 436 acts of hostility against churches in 2023 alone.<sup>14</sup> Yet to date, according to the DOJ’s own data, only four pro-abortion activists have been brought to justice.<sup>15</sup>

By contrast, pro-life advocates continue to be vigorously prosecuted, even though virtually all their cases involve incidents that occurred years ago. For example, the incident for which Mark Houck was arrested occurred on October 13, 2021, but he was not arrested until September 23, 2022, almost a year later – but within months of the Supreme Court’s decision in *Dobbs*, released June 24, 2022.

Similarly, in Tennessee, the incident which led to Paul Vaughn’s arrest occurred on March 5, 2021, but he was not arrested until October 5, 2022, nineteen months later – but again, only months after *Dobbs* was decided.

Again, in Michigan, the incident which gave rise to the prosecution of Calvin Zastrow and seven other pro-life defendants there occurred on August 27, 2020, but they were not indicted until February 15, 2023, some 2 ½ years later. But in the

<sup>13</sup> <https://catholicvote.org/pregnancy-center-attack-tracker/>.

<sup>14</sup> Family Research Council, “Hostility Against Churches Is on the Rise in the United States,” February 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://downloads.frc.org/EF/EF24B78.pdf.

<sup>15</sup> “Recent Cases on Violence Against Reproductive Health Care Providers,” (as of May 30, 2023), <https://www.justice.gov/crt/recent-cases-violence-against-reproductive-health-care-providers>.

interim, *Dobbs* had been decided.

In addition, in each of these cases the local authorities had made some arrests, filed charges, and concluded the matter long before the Biden Administration acted. There was no need for the federal government to get involved at all.

### **Paul Vaughn's Case**

In Mr. Vaughn's case in particular, he was not arrested at the scene, although several other pro-life advocates were arrested. Mr. Vaughn did not personally obstruct or interfere with any patients, but instead remained a good distance away from the entrance, engaged in discussions with the police on site and communicated between the police and the peaceful demonstrators.

At no time did he obstruct or interfere with anyone seeking access to the abortion clinic. In fact, he never even spoke to a clinic client or employee. Instead, his actions were concentrated on educating the police as to what a "rescue" involved and then assisting as a messenger between the police, situated at one end of the second-floor hallway farthest away from the clinic entrance, and the pro-life advocates, who were situated at the other end of the hallway, in front of the entrance.

The Government accused Mr. Vaughn of aiding and abetting the pro-life defendants at the entrance and of being a co-conspirator by intentionally engaging with the police in hopes of delaying their arrest of the pro-life individuals in front of the entrance. One pro-life leader, Chester Gallagher, was captured on video with his arm around Mr. Vaughn (which he livestreamed via Facebook) saying that Mr. Vaughn's role was to delay the police by talking with them.

While Mr. Vaughn did not take the opportunity to rebut Mr. Gallagher's statement, he was being summoned back to the police and at all times engaged in sincere and good faith discussions with them.

In fact, the Chief Negotiator for the police, Travis Watkins, testified at trial in Mr. Vaughn's defense. He said that Paul Vaughn was friendly and pastoral in his dealings with the police and that he saw nothing in Mr. Vaughn's demeanor or actions that suggested he was being false, despite his extensive training and experience as a negotiator. He further testified that Mr. Vaughn was cooperative; he never disobeyed a single request the police made of him. Instead, according to Travis Watkins, Mr. Vaughn was definitely helpful and not a hindrance.

There was no need to have arrested Paul in the first place, and certainly no good reason to employ lethal weapons and the over-the-top show of force they did.

*The FBI's Care-less Approach to the CompassCare Case.*

In the case of CompassCare Pregnancy Services in Buffalo, New York, another Thomas More Society client, a pro-abortion activist firebombed the facility in the early morning hours of June 7, 2022. It was the second pregnancy resource center to be firebombed since the leak of the *Dobbs* decision overturning *Roe*; the first occurred on Mother's Day, May 8, 2022, in Madison, Wisconsin.

The perpetrator was seen on surveillance video taken by CompassCare, which CompassCare promptly turned over to local law enforcement. But the local police, working with the FBI, stonewalled CompassCare after reviewing the video and refused to give it back and appeared to take little or no action to investigate the matter. CompassCare finally had to sue and litigate the case for six months just to regain control of its own video.<sup>16</sup> The police invited a settlement, but only on condition that CompassCare agree not to show the video to the public for two years. *Id.*

Worse still, due either to the apparent lack of interest or ability in the FBI and the local police in solving the crime – after all, as Attorney General Merrick Garland testified, they “are doing this at night in the dark”<sup>17</sup> -- CompassCare was forced to hire its own private investigator to pursue the perpetrators.

To summarize: Before *Dobbs*, the only criminal FACE prosecutions tended to involve violent or threatening activity. After *Dobbs*, every peaceful pro-life advocate who could be arguably charged with a FACE violation was rounded up and had the proverbial book thrown at her. No matter whether it was an 89 year old survivor of a Soviet death camp like Eva Edl, or a 75 year old grandmother in failing health like Paulette Harlow, or 76 year old Joan Andrews Bell, a pro-life hero who has laid down her life on behalf of the unborn since *Roe v. Wade* was decided in 1973, the Biden Administration would stop at nothing to see them put away behind bars for years.

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<sup>16</sup> Tabitha Goodling, “‘This is what the FBI didn't want you to see’ – CompassCare wins lawsuit over footage of pro-abortion firebombing”, Pregnancy Resource News, April 19, 2023, <https://pregnancyhelpnews.com/this-is-what-the-fbi-didn-t-want-you-to-see-compasscare-wins-lawsuit-over-footage-of-pro-abortion-firebombing>.

<sup>17</sup> “Garland slammed for saying DOJ prosecutes more pro-lifers than pro-choice arsonists because pro-lifers act in 'daylight'”, <https://noticias.foxnews.com/video/6321507681112>.

While the Biden DOJ was busy hunting down peaceful pro-life advocates for events which had occurred long before, violent pro-abortion activists were engaged in an ongoing campaign of vandalism,

Furthermore, not only were the eight pro-life advocates in Michigan, the nine in Washington, D.C., and the eleven in Middle Tennessee, and Mark Houck in Philadelphia prosecuted for events which had occurred many months and in some cases years before, but in the cases of all except Mark Houck they were also charged with a felony Conspiracy Against Rights violation of 18 U.S.C. § 241, carrying with it a maximum sentence of up to ten years in prison and a fine of up to \$250,000.

In our extensive research of this outrageous and vindictive piling on of charges we have not found a single example of a peaceful demonstration involving advocates motivated by sincere and in most cases deeply religious convictions treated so harshly. Never before in the history of our nation have we seen a protest movement opposed by our own government in such an extreme and unjustified manner.

Had the civil rights movement of the 1950's and '60's had been persecuted so severely it likely would never have succeeded. Imagine if the federal government had come down as hard on the sit-ins at lunch counters as the Biden Administration has come against the pro-life sit-ins at abortion clinics.

The two-tiered justice meted out by this Administration could not be more pronounced. It has demonstrated a "pattern of unlawful favoritism" that "evinces] . . . intentional discrimination on the basis of viewpoint." *Brown v. City of Pittsburgh*, 586 F.3d 263, 293-94 (3d Cir. 2009).

**After *Dobbs*, Congress lacks Authority to Regulate the Noneconomic Intrastate Activity of Pro-life Advocates.**

The foundation on which FACE was built is the invalid premise that abortion is a constitutional right. That foundation has been decimated by *Dobbs*. Because FACE no longer protects abortions, it can no longer be justified on the basis of "anti-abortion" activity undertaken decades ago.

Several federal appellate courts sustained FACE as a valid exercise of Congress' Commerce Clause authority before *Dobbs*, relying, for example, on the rationale that "violent and obstructive acts" that were [m]otivated by antiabortion sentiment" thereby "intimidated a number of physicians from offering abortion services."

*United States v. Gregg*, 226 F.3d 253, 262 (3d Cir. 2000) (citing S.Rep. No. 103–117, at 11; H.R.Rep. No. 103–306, at 9, U.S.C.C.A.N., at 706); *Norton v. Ashcroft*, 298 F.3d 547, 555 (6th Cir. 2002) (same).

After *Dobbs*, as noted above, this rationale collapses, because “anti-abortion” sentiment is not a valid basis for legislating; abortion is no longer a federal concern. As the Supreme Court emphatically stated in *Dobbs*, “the authority to regulate abortion must be returned to the people and their elected representatives.” 597 U.S. 215, 292.

Under principles of federalism, “[t]he Constitution requires a distinction between what is truly national and what is truly local.” *United States v. Morrison*, 529 U.S. 598, 617 (2000). FACE does violence to that distinction, because Congress may not “regulate noneconomic, *violent* criminal conduct based solely on that conduct’s aggregate effect on interstate commerce.” *Id.* (emphasis added). *A fortiori*, Congress may not regulate noneconomic, *peaceful* criminal conduct like the sit-ins that violate FACE based solely on their aggregate effect on interstate commerce.

**Tacking on the Conspiracy Against Rights Charge was Perhaps the Greatest Abuse of All, and was also Likely Unconstitutional.**

As great as the abuse of FACE was in these cases, I submit that it pales in comparison to the use of the Conspiracy Against Rights statute, 18 U.S.C. § 241, to transform a misdemeanor FACE violation with a maximum penalty of six months in prison and a fine of up to \$10,000 into a felony with a maximum penalty of ten years imprisonment and a fine up to \$250,000.

The utter lack of proportion between the underlying crime and its penalty and the conspiracy and its penalty is breathtaking and virtually unprecedented. As Judge Posner of the Seventh Circuit has observed, “[t]he proper punishment for conspiracy is a function of the gravity of the crime the defendants conspired to commit.” *United States v. D’Antoni*, 874 F.2d 1214, 1221 (7th Cir. 1989) (Posner, J., concurring). Judge Posner further counseled that “[t]he principle that criminal sentences should be related to the gravity of the criminal conduct is [important], and deserves Congress’s attention. Inadequate punishment can work a miscarriage of justice, just as excessive punishment can.” *Id.* at 1222.

The punishment inflicted on these men and women of great courage and conviction is grossly excessive and unjust.

In a nation that doesn't simply tolerate political dissent and protests but celebrates them, the use of this conspiracy statute against these individuals who were willing to interpose themselves on behalf of the most innocent and helpless children is abhorrent and indefensible. It was purely punitive, intended to instill abject fear in any who would even consider standing up to the abortion industry, and to suppress the expression of pro-life views.

**The Conspiracy Against Rights Felony Charge is Incompatible with FACE's Independent Proscription on Non-Violent Physical Obstruction and Therefore Unconstitutional as Applied.**

Earlier this year, the Supreme Court confirmed that in order to “respect the prerogatives of Congress in the quintessentially legislative act of defining crimes and setting the penalties for them,” the scope of a federal criminal statute must be understood in light of its “context.” *Fischer v. United States*, 603 U.S. 480, 486, 497, 498 (2024) (internal quotes omitted). “[T]he inquiry boils down to what Congress intended, as divined from text and context.” *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 187 (2023).

Under these principles, the Conspiracy Against Rights statute, which was enacted in 1870 as part of the Ku Klux Klan Act, is incompatible with FACE and cannot lawfully be applied against these nonviolent defendants.

Congress adopted the FACE Act in large part “to prevent the use of blockades” outside and inside of abortion facilities, according to both the Senate and House Committee Reports en route to sending their respective versions to the full Congress. See S-Rep. 103-117 at \*2, \*7 (1993) (stating that the first purpose was to stop “blockades,” explaining that “[t]ypically, dozens of persons . . . trespass onto clinic property and physically barricade entrances and exits by sitting or lying down or by standing and interlocking their arms”) (emphasis added); H.R. Rep. 103-306 at \*699, \*704 (1993).

FACE has a detailed enforcement scheme to punish such conduct. It provides that even violent first-time offenders who do not cause bodily injury or death cannot be imprisoned “more than one year” for a first-time offense or “more than 3 years for a subsequent offense.” 18 U.S.C. § 248(b). However, nonviolent first-time offenders of FACE’s prohibition on “physical obstruction” cannot be imprisoned “more than six months.” 18 U.S.C. § 248(b)(1)-(2). In other words, the plain text of the statute confirms that individuals who participate in a group-oriented nonviolent clinic blockade cannot be convicted of a felony, for a first-time offense (i.e., punishable by

more than one year in prison).

Indeed, to obtain support from certain reluctant Republicans, Senator Kennedy, the primary sponsor of the bill, assured them “that if an individual does violate this law for the first time, it is not a felony, but if they are going to be involved in repetitive violations, it is going to be a felony.” Senate Debate Transcript 15668 (Nov. 16, 1993).

In short, the Conspiracy Against Rights statute should never have been used under the circumstances of these nonviolent, first offense sit-ins.

Thank you again for the opportunity to testify. I would be glad to answer your questions.

Mr. ROY. Thank you, Mr. Crampton.  
Professor Waters, you may offer your testimony.

**STATEMENT OF JESSICA L. WATERS**

Ms. WATERS. Chair Roy, Ranking Member Scanlon, and the Members of the Subcommittee, thank you for inviting me to testify today.

We are here to discuss the Freedom of Access to Clinic Entrances Act, otherwise known as FACE. The specific provisions of FACE are detailed in my written testimony but, in brief, FACE created criminal penalties and civil remedies against specific types of conduct, not speech.

That conduct includes the use of violence or threats of violence directed at people providing or obtaining reproductive health services or seeking to exercise their First Amendment religious rights at houses of worship.

It prohibits physically obstructing the entrances to facilities that provide those services and prohibits damaging those facilities, importantly, only if these acts were undertaken to injure, intimidate, or interfere with someone seeking to obtain or provide the before listed services.

I want to make three brief points about the impetus for FACE and why Congress found it necessary to implement a Federal remedy.

First, as I detailed in my written testimony, there was clear evidence of escalating violence against reproductive health clinics and providers. As was summarized in the House Judiciary report on FACE between 1977–April 1993, so right before FACE was enacted, there were more than 1,000 acts of violence against providers of reproductive health services and the United States and these acts were serious ones.

They included 36 bombings, 81 arsons, 131 death threats, 84 assaults, two kidnappings, 327 clinic invasions, one murder, and over 6,000 clinic blockades and other disruptions, and while at the time of FACE passage the documented surge in nationwide interstate violence was against providers and clinics that provided abortion care.

Congress wisely made the deliberate decision to protect any reproductive health service facility or reproductive health service provider regardless of whether they provide abortion care.

My second point is that FACE was needed because existing State laws and remedies were demonstrably inadequate to provide—to protect providers and patients. The June 1993, the Senate Committee report on FACE made clear findings on this point noting several reasons why State remedies were inadequate.

First, the patchwork of State laws made it impossible to address unlawful conduct that spanned across State lines. State penalties were often insignificant, thus not providing a deterrent effect.

States weren't resourced to respond to the numerous blockades and were, as the Senate report on FACE stated, quote, "frequently overwhelmed by the sheer number of blockades," and, unfortunately, for some State law enforcement entities and officers were simply unwilling to enforce State laws against people attempting to, in their view, stop abortions.

My third point is that there is a constitutional—sound constitutional basis for FACE. Congress relied on both the commerce clause of the Constitution as well as Section 5 of 14th Amendment and developed an extensive record in support of both.

In support of commerce clause authority the record showed that reproductive health providers are involved in interstate commerce both directly and indirectly by things like purchasing medical supplies and equipment across State lines, that their patients engage in interstate commerce by traveling from one State to another to obtain services, that clinic employees travel across State lines to work, and that the conduct that FACE addressed directly negatively affects interstate commerce by, for example, forcing clinics to cease operating.

Indeed, every U.S. Circuit Court that has considered the issue has found that the FACE Act is a constitutional exercise of Congress' authority under the commerce clause.

I note these three points because they hold true today and speak to the need for continued enforcement of FACE. The statistics for 2022 show an increase in major incidents like arson, burglaries, death threats, and clinic invasions.

There was also a sharp increase in violence and disruption in States that are protective of abortion rights. It is plain that many of us differ on questions of the legality and morality of abortion.

I'm under no illusions about that as I sit here. Where I do hope we do not differ is in our condemnation for vandalism, violence, threats against any reproductive healthcare facility, whether it is a prolife facility, an IVF clinic, or a facility that offers comprehensive ranges of services including abortion.

People should be able to seek medical care, and medical professionals should be able to go to work and provide it without fear of assault, invasions, blockades or murder, and this is an issue that warrants a Federal remedy.

Thank you.

[The prepared statement of Ms. Waters follows:]

**Written Testimony of Jessica L. Waters, J.D., before the House Judiciary Committee**  
**Subcommittee on the Constitution and Limited Government**  
**December 18, 2024**

Chairman Roy, Ranking Member Scanlon, and members of the Subcommittee on the Constitution and Limited Government of the Committee on the Judiciary, thank you for inviting me to testify today. I am Jessica Waters and I am a professor in the School of Public Affairs at American University in Washington, D.C. I am also a Faculty Fellow in American University's Center for University Excellence; the Center brings university research expertise to pressing problems in the public domain. I recently served for seven years as American University's Dean of Undergraduate Education and Vice Provost for Academic Student Services after holding multiple leadership positions at the university. My research focuses on reproductive rights law and policy.

Thank you for the invitation to provide testimony about the continued need for enforcement of the Freedom of Access to Clinic Entrances Act.

**FACE Provisions**

The Freedom of Access to Clinic Entrances Act (FACE)<sup>1</sup> was enacted in 1994 with strong bipartisan support. Broadly, FACE authorizes both civil remedies and criminal penalties against a person who engages in violent or obstructive conduct intended to interfere with people seeking or providing reproductive health services or seeking to exercise religious freedom at houses of worship.<sup>2</sup> As detailed below, FACE protects both people and places from unlawful conduct while explicitly excluding protected speech, such as peaceful protest, from its purview.

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<sup>1</sup> 18 U.S.C. 248

<sup>2</sup> 18 U.S.C. 248

First, FACE protects people seeking or providing reproductive health services at reproductive health facilities, and people exercising or seeking to exercise religious freedom at places of religious worship. More specifically, it prohibits anyone from, by force or threat of force or by physical obstruction, intentionally “injur[ing], intimidat[ing] or interfer[ing] with” any person because that person is seeking or has sought to provide or obtain reproductive health services.<sup>3</sup> The term “reproductive health services” is defined as “reproductive health services provided in a hospital, clinic, physician’s office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.”<sup>4</sup> FACE likewise prohibits this same conduct against a person who is “lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.”<sup>5</sup> Finally, FACE also prohibits attempts to engage in the conduct outlined above.<sup>6</sup>

Second, FACE also protects against intentional damage to or destruction of reproductive health facilities because that facility provides reproductive health services and to places of religious worship (and attempts at the same).<sup>7</sup> “Facility” is defined as a “hospital, clinic, physician’s office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.”<sup>8</sup>

Third, FACE explicitly distinguishes between protected expressive speech and unlawful conduct. Expressive speech activities such as “peaceful picketing or other peaceful demonstration” are

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<sup>3</sup> 18 U.S.C. 248 (a)(1)

<sup>4</sup> 18 U.S.C. 248 (e)(5)

<sup>5</sup> 18 U.S.C. 248 (a)(2)

<sup>6</sup> 18 U.S.C. 248 (a)(1) and (a)(2)

<sup>7</sup> 18 U.S.C (a)(3)

<sup>8</sup> 18 U.S.C. 248 (e)(1)

flatly excluded from FACE's purview.<sup>9</sup> Unlawful conduct, such as obstruction or violence, is prohibited by FACE.<sup>10</sup> Importantly, FACE's prohibitions do not distinguish based on an actor's viewpoint. Rather, FACE's protections target unlawful *conduct*, regardless of the types of reproductive health services one may seek or provide, the type of reproductive health care facility, the views of the actor engaging in prohibited conduct, or the basis of one's religious belief when seeking to exercise religious beliefs at houses of worship.

### **FACE Legislative History**

FACE was enacted in 1994 with overwhelming bipartisan support, including from numerous Members of Congress who strongly opposed abortion but condemned the use of violent and extreme conduct to further that cause. The law's legislative history tells us much about why FACE was enacted.

The House Judiciary Committee Report regarding HR 796 (FACE) in October of 1993<sup>11</sup> spoke directly to the impetus for FACE, noting "A nationwide campaign of blockades, invasions, vandalism, threats and other violence is barring access to facilities that provide reproductive health services including services arising from the constitutionally protected right to choose. This dramatically escalating violence is endangering the lives and well being of patients, providers, and their respective families."<sup>12</sup> The report documented the escalating "campaign of violence" against providers of reproductive health care in the years leading up to FACE's introduction, "including blockades and invasions of clinics; violence and threats of violence against providers

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<sup>9</sup> 18 U.S.C. 248 (d)(1) and (d)(2)

<sup>10</sup> 18 U.S.C. 248(a)(1)-(a)(3)

<sup>11</sup> U.S. House of Representatives Committee on the Judiciary Report 103-306, Freedom of Access to Clinic Entrances (October 1993) [hereinafter House Judiciary Report]

<sup>12</sup> House Judiciary Report at page 6

and their families; and vandalism and destruction of property at facilities.”<sup>13</sup> The report goes on to explain that from “1977 to April 1993, more than 1,000 acts of violence against providers of reproductive health services were reported in the United States. These acts included at least 36 bombings, 81 arsons, 131 death threats, 84 assaults, two kidnappings, 327 clinic ‘invasions,’ and one murder. In addition, over 6,000 clinic blockades and other disruptions have been reported since 1977.”<sup>14</sup> The Senate Committee on Labor and Human Resources made similar findings, specifically noting that over the same time period anti-abortion violence was increasing in both scope and severity and detailing a “nationwide pattern” of incidents of murder, assaults, blockades, arson, firebombings, and threats of force around the country.<sup>15</sup>

Both chambers also noted the need for a new federal law to provide a remedy for this nationwide violence impacting interstate commerce, because, prior to the enactment of FACE, “the laws currently in place at the Federal, state, and local level have proven inadequate to prevent the violent conduct described above.”<sup>16</sup>

As reflected in FACE’s final text, both chambers were careful to carve out protected speech from FACE’s purview. The House Report noted that “nothing in the act shall be construed to prohibit any expressive conduct, including peaceful picketing or other peaceful demonstration.”<sup>17</sup> The Senate Report likewise noted “nothing in the Act is intended to prohibit expression protected by the First Amendment to the Constitution.”<sup>18</sup> The legislative history is also clear that FACE is

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<sup>13</sup> House Judiciary Report at page 6

<sup>14</sup> House Judiciary Report at page 6-7 (quoting National Abortion Federation statistics)

<sup>15</sup> U.S. Senate Committee on Labor and Human Resources Report 103-117 (July 1993) at pages 3-12 [hereinafter Senate Report]

<sup>16</sup> House Report at pages 3,10; Senate Report at pages 17-21

<sup>17</sup> House Judiciary Report at page 13

<sup>18</sup> Senate Report at page 27

intended to be viewpoint neutral; the House Report states, “H.R. 796 is designed to be applied evenly to anyone who engages in the prohibited conduct, regardless of their views on the issue of abortion. For example, by covering reproductive health services and not merely abortion, the bill would apply to blockades by pro-choice activists -- should such blockages occur -- outside clinics engaged in pro-life counseling or providing abortion alternatives.”<sup>19</sup>

#### **The Continued Need for FACE Enforcement**

Unfortunately, recent escalating violence and disruption targeted at reproductive health facilities, care providers, and patients -- the very kind that motivated the introduction and passage of FACE -- has demonstrated that this important law enforcement tool is still needed. The National Abortion Federation has documented that between 1977 and 2022 there have been 11 murders, 42 bombings, 200 arsons, 531 assaults, and thousands of incidents of criminal activities directed at patients seeking, and medical professionals and volunteers providing, reproductive health care.<sup>20</sup> Indeed, 2022 marked a year of increased violence and disruption nationwide, including major incidents like arsons, burglaries, death threats, and clinic invasions. NAF further documents that in states protective of abortion access, there was a disproportionate increase in violence and disruption in 2022: stalking increased by 913%; bomb threats were up by 133%; and obstructions of clinic entrances increased 538%.<sup>21</sup>

While I wish the facts on the ground were different, this surge in violence and disruption makes plain that the need for FACE still exists today.

Thank you for the opportunity to testify on this important topic.

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<sup>19</sup> House Judiciary Report at page 3

<sup>20</sup> National Abortion Federation Report, 2022 Violence and Disruption Statistics at page 2

<sup>21</sup> National Abortion Federation Report, 2022 Violence and Disruption Statistics at page 8

Mr. BISHOP. [Presiding.] Thank you, Professor Waters.

We will now proceed under the five-minute rule with questions, and I recognize myself for five minutes of questioning.

Mr. Crampton, I take it you represent Mr. Vaughn. I've had occasion to look at the Sixth Circuit's Opinion or a panel's Opinion there from November 24th—hang on one second—I guess, an application to stay his sentence and it, of course, went against you, Mr. Vaughn.

I find this piece to be very interesting at the heart of what I believe to be the issue here. It says that you presented a study by the Crime Prevention Research Center which identified 135 attacks on prolife churches and pregnancy resource centers compared to only six attacks on abortion clinics since the date of *Dobbs* and that Mr. Vaughn's argument to the court was that under the FACE Act the Department of Justice has prosecuted only two people under the FACE Act for attacking pregnancy resource centers while prosecuting 26 prolife activists under the same statute.

Here's where it gets very interesting, having just read this. It says, but most of the incidents in the CPRC study appear to allege vandalism in potential violation of one subsection of the FACE Act rather than obstruction in violation of another subsection, which is what Vaughn was prosecuted for, and the government could exercise its discretion to prosecute obstruction rather than vandalism without violating the equal protection clause.

Now, as I just ran across it—I've been practicing law a long time—well, practiced until I got here—and that may—I guess I get the distinction being drawn.

When you consider that vandalism against pregnancy resource centers usually, almost always, itself is conveying a threat of force for people who may subscribe to the services of that clinic there's no distinction whatsoever between those acts and for the Department of Justice to exercise discretion to one and not the other based, apparently, on the ideology of the person engaged in those acts.

I can't think of anything that seems to be more of an example of selective prosecution the Constitution would not abide. So, that's a stunning—what about that, Mr. Crampton? Do I have that wrong?

Mr. CRAMPTON. I think you have that exactly right, Mr. Congressman. A further distinction is as you suggest, I would argue the vandalism actions are of a more serious nature than a sit-in.

Moreover, they were more recent. Mr. Vaughn's actions took place in 2021. Those acts of vandalism took place in 2023–2024. So, it's a very puzzling distinction that the court drew there.

Mr. BISHOP. To Professor Waters' point, I do not disagree that we don't want people engaged in violence around abortion clinics or pregnancy resource centers. It should be condemned, and it should be punished appropriately.

When I see—I just wonder, Professor Waters, when you see these things where SWAT teams are going out to the homes of people because they've engaged in a nonviolent act, which I understand alleged here is a conspiracy to block access for an hour that denied one person—one patient and one employee access it just seems to me troubling that you got guns drawn and pointed at a man's head

and his children arrested in the side yard or stopped at the—doesn't that seem we're in an environment where we're always talking about police officers should deescalate in the context of—what justifies that, Professor Waters? Does that disturb you?

Ms. WATERS. Thank you for the question. So, I will say that as a human listening to Mr. Vaughn speak, it sounds like that was a terrifying day and I'm not going to dispute his experience of that.

I do not work for the DOJ. I am not involved in prosecutions—

Mr. BISHOP. I'm not trying to make you assign responsibility. I'm just asking for a simple—are there things we can agree on and it seems to me that, and I'll just leave it at this, Professor Waters. It just seems—because I think it's a very simple thing. I don't understand—and we have seen it in so many ways—it is the fundamental part of this weaponization.

I was going to yield all my time to Mr. Biggs, but I got carried away. I just don't—the American people see these incidents and they seem to be made for CNN.

When people of certain political persuasions or ideas are targeted and the SWAT team goes out and raids them in their homes and it's totally disproportionate.

That must stop and I'll guarantee you it is going to stop in the next Administration.

I have 15 seconds for you, Mr. Biggs.

Mr. BIGGS. Thank you, Mr. Chair. So, for that reason I won't even engage in a diatribe or ask questions, but I will ask that the May 5, 1994, the Congressional Record from the House, page 9409, Mr. DeLay's speech about this, the FACE Act passage be admitted into the record.

Mr. BISHOP. With my apologies and without objection, so ordered, and I now recognize the Ranking Member for five minutes of questions.

Mr. BISHOP. I beg your pardon. The gentleman is recognized.

Oh, I see. Mr. Nadler is recognized.

Mr. NADLER. Thank you, Mr. Chair.

Mr. Vaughn says he wasn't acting violently. He was acting peacefully, quote, "sitting in an abortion provider's doors," in other words, blocking access. In other words, violating the FACE Act, which is the Freedom of Access to Clinic Entrances Act. He was convicted of a crime by a jury of his peers because of that.

He also said, or some other witnesses said, "abortion laws have been returned to the States and so should enforcement." Abortion laws have been returned to the States, but enforcement in those States where abortion is still legal is a Federal responsibility.

Professor Waters, has any Federal Court post-*Dobbs* considered the question of whether the FACE Act is constitutional and if so what did the court hold?

Ms. WATERS. Thank you for the question. It is important to point out that every Federal Court pre-*Dobbs* that has considered the constitutionality of the FACE Act, whether it is a First Amendment challenge or a commerce clause challenge has held that the FACE Act is constitutional.

To my knowledge, there is one court that post-*Dobbs* has directly addressed the question of whether the FACE Act is constitutional, and that was actually in Mr. Vaughn's case.

So, the District Court, the Federal District Court, in that case, on a motion to dismiss, held very squarely that in accordance with the prior precedent from many circuits, the FACE Act was constitutional and found that it was a valid exercise of Congress' commerce clause authority and also did not pose First Amendment—

Mr. NADLER. Thank you. How would you describe the effect that State abortion bans have had on interstate commerce, such as on transit of persons across State lines?

Ms. WATERS. It's somewhat ironic when we think about a post-*Dobbs* world what that has created is more interstate commerce.

We know that in 13 States, abortion is almost completely unavailable. We know that this means that a person, a woman who is seeking abortion care now needs to travel.

We know that the rates of people traveling to receive abortion care have risen dramatically. One in five patients who seek abortion care now have to travel across State lines. That does not—what that does is increase expenses for that woman. She has to take more time off from work. She has to be away from her family. She has to pay the travel expenses that it takes to cross State lines. That pushes pregnancies later, right?

So, the impact, ironically in a post-*Dobbs* world is more impact on interstate commerce.

Mr. NADLER. Thank you. In 1993, during testimony before this Committee, the field director, the anti-abortion group Operation Rescue, when asked whether the purpose of violent and threatening activity by some anti-abortion activist was to deny women access to abortion services testified, and I quote,

We may not get laws changed or be able to change people's minds. But if there is no one willing to conduct abortions, there are no abortions if there is no one willing to conduct abortions.

Are you concerned that today's evident joint effort by Congressional Republicans and anti-abortion extremists to repeal the FACE Act or to have it declared unconstitutional is another step in a campaign to intimidate abortion providers in States where the right to an abortion remains protected?

Ms. WATERS. I am concerned. I appreciate the statements of multiple members that they don't condone violence, and I am sure that is true. Unfortunately, there are people out there who will engage in violent activity. The statement you just read is a prime example of it.

I do think that what we are operating now is a climate of fear. Medical professionals fear liability. They fear being able to do their jobs up to existing standards of medical care. Without protections like those provided in FACE, they fear for their own safety and the fear going to work. So, I do agree that we are in a climate of fear and uncertainty. I think that is deliberate. I think reversing the protections that we have will only add to that.

Mr. NADLER. In other words, repealing the FACE Act would add to violence?

Ms. WATERS. It is very possible that it would.

Mr. NADLER. Thank you. I yield back.

Mr. ROY. [Presiding.] Ranking Member?

Ms. SCANLON. I just wanted to seek unanimous consent to enter the two opinions that were mentioned, the Tennessee District

Court's order and Memo Opinion denying Mr. Vaughn and his co-defendants' joint motion to dismiss. That's *U.S. v. Gallagher*. The 2002 Sixth Circuit decision in *Norton v. Ashcroft*.

Mr. ROY. Without objection.

Ms. SCANLON. Thank you.

Mr. ROY. With that, I will recognize the gentleman from California, Mr. Kiley.

Mr. KILEY. Ms. Hawley, I'm from California. Would it surprise you to learn that there are pregnancy centers in my region that have had to invest significantly in security measures because of the multiplicity of threats against them?

Ms. HAWLEY. It would not at all.

Mr. KILEY. They have also been the subject of hostile legislation from our State legislature. One law was even struck down by the U.S. Supreme Court because of violation of the First Amendment. Of course, we have been talking about the ways in which the Biden Administration has turned a blind eye to hostile and potentially even violent actions against these centers.

So gosh, they have been subject to attacks and to hostility at the State and Federal level. There must be really nefarious things going on at these places. Could you tell us some of what goes on there that might be sparking this outrage?

Ms. HAWLEY. Sure. So, pregnancy care centers are a strange target for ire. Pregnancy care centers are there when no one else is. We know from women who have had abortions that the majority of them say they would have chosen a parent or chosen differently if they would have had additional resources, either financial or familial support.

The pregnancy care centers are there to supply that support when they can. They provide financial resources. They provide material resources like car seats, baby blankets, clothes, financial resources, food, housing, job training, and resume training as well as parenting classes.

In 2022, they provided almost \$316 billion worth of goods and services to moms and families facing unexpected pregnancies. Again, a strange target.

Mr. KILEY. A very strange target. They are giving away diapers. They are giving away wipes. They are giving away baby formula. Baby formula, that is outrageous, isn't it that they are just giving it away?

What is driving this? It is really incredible that these centers that provide such critical services to people who are in need have been left in a position where they have to spend their own limited resources putting up a security fence or something like that to protect folks who go there.

On a separate note in terms of the law here, so is there any precedent for a law that at least on its face is neutral to be challenged on First Amendment grounds based on this idea of selective enforcement? What would that look like and has that been attempted here?

Ms. HAWLEY. Absolutely. There is a number of cases in Federal Court. I would point out to you the Frederick Douglass Foundation case decided unanimously by a D.C. Circuit panel a year or two ago. In that case, there was a vandalism—or excuse me, an ordi-

nance against writing on public streets here in the District of Columbia. The court allowed that to go forward on the claim that it had been unequally enforced against prolife advocates and other advocates.

Mr. KILEY. Very interesting. Perhaps something to look at and thank you very much for your testimony. I will yield the remainder of my time to my colleague from Arizona, Mr. Biggs.

Mr. BIGGS. I thank the gentleman. Ms. Hawley, have there been increased attacks against pregnancy resource centers during the Biden Administration?

Ms. HAWLEY. Absolutely. We have had almost 100 attacks since the *Dobbs*' decision was leaked in May 2022.

Mr. BIGGS. Are you concerned that pro-abortion extremists would continue to attack pregnancy resource centers?

Ms. HAWLEY. I think that's a concern. We just heard from the gentleman from California about pregnancy care centers who are having to build security fences and hire security guards. That is something that is now commonplace for centers that provide resources to women.

Mr. BIGGS. Mr. Vaughn, would you characterize the events in Mount Juliet Tennessee as violent?

Mr. VAUGHN. Absolutely not.

Mr. BIGGS. Did you or anyone with you pose a physical threat to the people around you?

Mr. VAUGHN. Absolutely not.

Mr. BIGGS. Was there anything you did or said that could cause someone to think their life was immediately in danger or harm?

Mr. VAUGHN. Absolutely not.

Mr. BIGGS. So, it was clear you were not a threat to anyone around you?

Mr. VAUGHN. That is correct.

Mr. BIGGS. When the FBI came to serve your indictment, they raided your house and arrested you at gunpoint in front of your family?

Mr. VAUGHN. That is correct.

Mr. BIGGS. You know why they did that, right? It was to intimidate you.

Mr. VAUGHN. Sure.

Mr. BIGGS. It wasn't just to intimidate you and your family. It was to intimidate any other prolife activists in this country. That is the disproportionality that has resulted from the disproportionate impact of the enforcement of the FACE Act.

So, you were at the brunt of that. This regime is going to attack anyone that has disparate beliefs from them. That is why they have gone after Catholics. That is why they have spied on parents at school boards. It is a tactic they have employed for the last four years against conservatives of any stripe.

Criminal terrorists and illegal aliens, let them in. Give them free housing and other benefits. Conservative prolife Americans exercising their First Amendment rights, send the SWAT team to their house. That is clear political intimidation and that is why the FACE Act has to be repealed. Mr. Chair, I yield. Thank you, gentlemen.

Mr. ROY. I thank the gentleman from Arizona. I thank the gentleman from California for yielding time to the gentleman from Arizona unlike my good friend from North Carolina, parting shot on the way out of the Committee. With that, I would yield five minutes to the gentlelady from Texas, Ms. Escobar.

Ms. ESCOBAR. Thank you, Mr. Chair. I would like to thank the witnesses for their testimony before the Committee today.

We are closing out business in the House Judiciary Committee this Congress with a hearing that is meant to set the stage for the continued hostility we can expect next Congress toward reproductive healthcare.

Not content with undermining abortion access across the country since the fall of *Roe*, my colleagues across the aisle continue their attacks on the right to safely seek reproductive care in this country.

Let's remember that the reason the FACE Act was enacted at all was in direct response to escalating violence by the anti-abortion movement on abortion patients, clinic employees, and providers.

I want to be very clear. I stand firmly against all violence. I don't condone any threats or intimidation. I introduced the Healthcare Providers Safety Act earlier this Congress, which would amend the Public Health Service Act to authorize grants to healthcare providers to enhance the physical and cybersecurity of their facilities, personnel, and patients.

My bill would give providers the needed resources to ensure the safety of patients and that providers are able to continue providing essential reproductive healthcare.

Reproductive healthcare providers, patients, and facilities are frequently the targets of violence and harassment, ranging from vandalism to online harassment, to stalking, arson, and deadly attacks. Our providers deserve to care for patients, and patients deserve access to abortion care in safe environments.

Ms. Waters, how can Congress build on the protections created by the FACE Act and what steps can Congress take to improve or strengthen protections for patients and providers?

What other effective—or are there other effective methods to combat routine harassment and violence like the kind experienced by providers and patients at healthcare clinics?

Ms. WATERS. So, I think it is important to note that while FACE does provide an important Federal remedy that I would argue to your question that Congress needs to zealously protect, it does not preclude States from also enforcing remedies in their own State, right? So, we need both of those things, and we can hold both things. Both things can be true, right?

It is incredibly important that Congress send the message that if someone is providing legal healthcare, which abortion providers and other medical professionals are in the majority of the States, they will be protected. They don't have to fear liability. They don't have to fear violence. They don't have to change their medical practice to try to comply with ever changing laws. That is a message that Congress can send.

Ms. ESCOBAR. I want to tell a very quick story to give voice to a number of constituents who reached out to me after the reversal of *Roe*. I heard story after story about women who were forced to

terminate pregnancies because of the lack of viability of the fetus. Many of these constituents had to access their care at a clinic.

As they were mourning the loss of a child they badly wanted but a fetus that if they carried to full term would threaten their own life, creating motherless children in their family, they had to walk—I heard stories about women having to walk past crowds of people screaming at them with photos that they did not want to see in that moment as they were trying to save their own life and be around for their other children and could not adequately even mourn the loss of their baby's life because they were spiraling into shame because of what was about to happen.

I think it is really important that these women's stories be uplifted, which is why I wanted to share it with all of you today. Ms. Waters, thank you so much for your response. I appreciate it. I yield back.

Mr. ROY. I thank the gentlelady from Texas. I would now recognize the gentlelady from Wyoming for five minutes.

Ms. HAGEMAN. Thank you, Mr. Chair. Wyoming's lone facility performing procedural abortions opened last year in Casper. On a routine basis, prolife Wyomingites pray, hold vigils, and participate in advocacy activities outside of the clinic. Advocacy to the clinic patients sometimes involves giving a woman a rose and informing them of alternative services offered at crisis pregnancy centers.

Local reporting suggests that clinic employees are now claiming that this peaceful advocacy is harassment of patients and employees.

The clinic is now escorting all their patients to and from the building in response to these peaceful actions. Earlier this year one of the clinic's escorts actually pleaded no contest and paid a fine for assaulting a member of the prolife protest group.

There is now an attempt to elevate the harassment allegations to the local government.

Mr. Vaughn, does the situation in Casper, Wyoming, that I just described sound similar to your case?

Mr. VAUGHN. It does.

Ms. HAGEMAN. Do you think prayer and peaceful advocacy are violations of the law or are they instead activities that are secured by the First Amendment to the United States Constitution?

Mr. VAUGHN. They are both First Amendment protected activities and activities of love and seeking to help others.

Ms. HAGEMAN. Have you experienced these attempted mischaracterizations of your peaceful activities as being criminal or violent in some way?

Mr. VAUGHN. Right here in this very hearing.

Ms. HAGEMAN. We heard it just today from the Ranking Member on the Judiciary Committee.

Could you please explain and clarify what happened in your circumstances?

Mr. VAUGHN. Thank you for the opportunity. I was not sitting at any door. I was not standing at any door. At no time did I block anyone. My only activities were praying and talking with the police officers and relaying messages back and forth between the two parties.

Ms. HAGEMAN. OK. Do you think that the pro-abortion individuals who seek to misrepresent lawful activity as violence, that they are doing so because of the current administration's misapplication and unequal enforcement of the FACE Act?

Mr. VAUGHN. I think there is an element of that. I think as a Nation, we need to be able to communicate. As long as we sit here looking at each other face to face and we are not able to communicate and honestly represent facts, what hope is there for the news to get actually out to the people at the clinics?

I would just add that the people going and seeking abortion as Ms. Escobar told her story, that is a tragic thing. If they stopped and talked to someone out at the clinic, what they will find is loving help and people that would take them to a crisis pregnancy center or offer some other solution to help, if it is possible. If it is not, then they would find someone that might pray with them and encourage them. They would not find someone if they stopped and engaged in a conversation and actually listened to someone yelling or screaming or abusing them verbally. Certainly, not physically.

Ms. HAGEMAN. Those who hate wisdom, love death. That is part of what we are dealing with here. That goes, Ms. Hawley, to your statement about how you find it so utterly bizarre that crisis pregnancy centers have been the target of protests, activities, and vandalism when it is offering services and support to individuals in need.

I am with you. It is such a bizarre target. I think it demonstrates that this isn't necessarily a discussion about the FACE Act or the First Amendment or protecting constitutional rights or civil liberties.

There is a pro-abortion agenda that has been pursued, especially by this administration that doesn't make sense. That the abuse of the FACE Act is an attempt to criminalize the free thought and the ability for people to, as you say, peacefully protest.

It is a sad day in America when someone who is praying or attempting to have that kind of conversation that you are describing can be arrested years later for that behavior.

Based on your experience with the FACE Act, Ms. Hawley, do you think that the pro-abortion community is aware that the Biden-Harris Administration is selectively applying the FACE Act against the prolife community?

Ms. HAWLEY. So, I think it probably is. I would point out to you several press conferences that the Attorney General Gupta held. She announced just a short time after the *Dobbs*' decision was released a reproductive task force and noted that one of the goals of that reproductive task force during their daily meeting would be to seek out opportunities for FACE enforcement. Of course, that FACE enforcement would have been against prolife individuals.

Ms. HAGEMAN. Is praying outside an abortion facility where offering women information on alternative pathways, adoptions for their pregnancy a violation of the FACE Act?

Ms. HAWLEY. It should not be, no.

Ms. HAGEMAN. To your knowledge, would that violate any Federal law, what I just described?

Ms. HAWLEY. Not consistent with the First Amendment, no.

Ms. HAGEMAN. OK. The Biden Administration makes it appear that the FACE Act is merely a statute covering abortion facilities. In reality, it also prohibits certain acts against places of religious worship. Isn't that correct?

Ms. HAWLEY. Absolutely.

Ms. HAGEMAN. Has the current administration, Attorney General Garland or Assistant Attorney General Kristen Clarke prioritize protecting religious places of worship, especially in the wake of the antisemitic violence which has occurred in the wake of October 7th?

Mr. ROY. The gentlelady's has expired. So, you may answer the question and then we will move on.

Ms. HAWLEY. Thank you, sir. Not at all. The Family Research Council identified 436 attacks on churches and houses of worship just in 2023. There have been zero, zero prosecutions under the FACE Act for that violence and threats.

Ms. HAGEMAN. Well, thank you. Thank you for your indulgence. With that, I yield back.

Mr. ROY. I thank the gentlelady. I will now recognize the gentlelady from Vermont for five minutes.

Ms. BALINT. Thank you, Mr. Chair. I want to thank the witnesses for being here today. I know you are all very busy people.

Before I get to my statement on the topic at hand, I have to start by saying words absolutely matter. Mr. Crampton earlier, you likened the FBI to the Gestapo, to Nazis. That kind of rhetoric is not actually helpful in this debate.

The Gestapo operated without any civil restraints. Its actions were not subject to judicial appeal. Thousands of citizens, including Jews, trade unionists, political clergy, and others simply disappeared into concentration camps, one of those being my grandfather.

The political arm of the Gestapo could order prisoners to be maimed, tortured, and murdered. There was no legal process. The Gestapo under Adolf Eichmann organized the deportation of millions and millions of Jews to concentration camps.

Now, I understand that you feel passionate about this issue. I do. I understand that. Your use of the word Gestapo is inappropriate, is offensive, and it is uneducated. I urge you; I urge you as you continue your work to cease using this terminology because I think what we are trying to do here is actually elicit testimony that is helpful to get us to a better place. I don't think that this is helping.

Professor Waters, if the Justice Department were to stop enforcing the FACE Act or if it were no longer law, could you describe for people—because that's really what these hearings are about—describe for people what effect that would have on access to abortion care and other reproductive rights?

Ms. WATERS. I think it is important to note that if the FACE Act were no longer enforced, many of the institutions and many of the organizations that the colleagues to the left of me have described, they would also be at risk, right? I don't quite understand the argument that we think that DOJ and the FBI should be doing more to protect prolife centers, but at the same we should repeal FACE.

Ms. BALINT. Agreed. This confuses me, too.

Ms. WATERS. I do think, but the record is also very clear that we have seen a campaign of coordinated violence and blockades against centers and providers of reproductive healthcare, including abortion. Without these Federal protections, that would only increase.

I also think it is really important that we are precise in how we talk about FACE's protections. FACE very clearly does not reach peaceful protests outside of clinics that do not interfere with passage into that clinic. That is not covered under FACE. In fact, it is explicitly excluded.

Ms. BALINT. Can you say that again? Please, honestly, this is like the crux of it for me.

Ms. WATERS. It is an important point. Congress was very deliberate in carving out pure expressive activity from FACE's purview. So, some of the activities that have been described here, like peacefully protesting outside of a clinic and even having signs that may be inflammatory, as much as we may abhor that speech, the First Amendment likely protects that. It is important to distinguish between what FACE does and protections under the First Amendment.

Ms. BALINT. So, it is the blocking of the entrance that is making it difficult to get the care that they are entitled to.

Ms. WATERS. It is. It is violence. It is destruction of property. It is blocking entrances that is prohibited by FACE. FACE does not prohibit expressive speech.

Ms. BALINT. From your perspective, are clinic obstructions, even if they don't lead to threats of violence, like of course, we want to avoid violence, are they related to negative health outcomes? Have we seen increased mortality since *Dobbs* was overturned?

Ms. WATERS. We have seen an increase in both maternal mortality rates and infant mortality rates. Probably not surprisingly, those were going up very quickly in States that are most restrictive of abortion care.

Ms. BALINT. I thank you. I yield back.

Mr. ROY. I thank the gentlelady from Vermont. I am going to use the time for myself now. Mr. Crampton, you just had some questions directed at you. I want to give you a chance to respond very quickly because I want to move on to the rest of the questions.

I would note also that only 42 of my Democratic colleagues sought to join with us to sanction the International Criminal Court, which is trying to say that Prime Minister Netanyahu is somehow a war criminal for defending his country against the vicious attacks from Iran, from Hamas, from Hezbollah, and all of those that are trying to target the Jewish State. Do you have anything, quickly, to respond to the attacks?

Mr. CRAMPTON. Yes. Thank you very much, Mr. Chair, for the opportunity.

I would point to the gentlelady the facts as testified to by Mr. Vaughn. Here comes people, guns drawn, banging on his door, as he described it, and it is not an unfair characterization. He was kidnapped at gunpoint before his wife and children. No authority given. Even when asked directly, they just point to a little sticker on the vest saying that is all the authority you are going to get. That says FBI.

Mr. ROY. Mr. Vaughn, can you just add to that really quick? The phraseology is used. It was used intentionally by Mr. Crampton. We are talking about the Federal Bureau of Investigation showing up to your home, in front of your 11 children, with a weapon pointed at you for what you did in terms of praying and your activity at an abortion clinic. Is that true?

Mr. VAUGHN. That is absolutely true.

Mr. ROY. Do you think that was an appropriate use of the power of the Federal Government against you?

Mr. VAUGHN. Absolutely not. I am a local businessman. I have been there for 17 years in the community. A phone call, I would have happily talked to them.

Mr. ROY. Does not that invoke the kind of images Mr. Crampton is talking about of previous examples in history in terms of the fascism that we see out of Nazi Germany and how they treated citizens?

Mr. VAUGHN. It absolutely does. The gentlewoman said that there is recourse is by law and that there are laws that oversee this. I would like to ask for my 13-, 12-, and 18-year-old daughters that was out in the side yard, what recourse do they have at law for the abuse that they handled at this guy, holding them at bay right there? Also, at the Department of the FBI in Tennessee that two months later shot a guy in his own living room.

Mr. ROY. As a reminder—

Mr. VAUGHN. An internal investigation, who is investigating the investigators?

Mr. ROY. As a reminder, Mr. Vaughn, you were there because, as I understand your position, you believe that life begins at conception. You believe you are protecting and praying for life, correct?

Mr. VAUGHN. That is absolutely correct.

Mr. ROY. Your great sin, that the tyranny of the Federal Government was brought to bear against you at your home with a weapon in front of your 11 children was because you want to protect a human life?

Mr. VAUGHN. That is correct.

Mr. ROY. Ms. Hawley, are you familiar with the history of this Act? Because it is not true that the current leader in the Senate, Mr. Schumer, was the lead proponent of the FACE Act in 1993. In questioning for Republican Members of Congress, when asked about whether or not this would be used against, for example, we have 3, 10, 12 people prolife on a sidewalk in front of a clinic. People cannot get by. Police locked them up and put them in a paddy wagon. Take them away. Are they subject to a felony? Mr. Schumer said, "no." Yet, here we are.

Can you shed light on the extent to which the truth is, notwithstanding what Professor Waters said a minute ago, that what we are dealing with here is the conflation of the existing statutes and the things that go back to the Ku Klux Klan Act and that we now have a situation under the Federal civil rights conspiracy that they are blending these together to target people intentionally. That they are using this and targeting it intentionally, so that they can go after people, punishable by up to 10 years in prison. Can you add some context to that, Ms. Hawley?

Ms. HAWLEY. Absolutely. So, the FACE Act comes with several different sorts of levels of punishment.

For a first-time nonviolent offense, there is six months in jail. A subsequent nonviolent offense might get 18 months in jail. If you tack on a conspiracy to violate civil rights, you get 10 years.

Take Eva Edl. She was sitting in a wheelchair. She was blocking an entrance. Sitting in a wheelchair, blocking the entrance, singing and praying hymns, she is subject to 11 years in Federal prison and hundreds of thousands of dollars of fines.

Mr. ROY. So, what we are talking about here, as I mentioned—Mr. Vaughn, did you have something you wanted to add there?

Mr. VAUGHN. No.

Mr. ROY. That Mr. Vaughn is facing this kind of persecution. He is not alone. We have talked about Ms. Edl. To be clear, this conflation of the statute, had that ever been done before prior to Kristen Clarke?

Ms. HAWLEY. Not until the Biden Administration, no.

Mr. ROY. So, this administration took the unprecedented act of merging these together so they could have a Federal conspiracy to target very specifically prolife activists.

Ms. HAWLEY. So, the numbers here speak for themselves. Again, 55 individuals have been subject to prosecution under the FACE Act. Fifty of those have been prolife. There have been 26 FACE Act civil and criminal prosecutions. Only two of them have been in protection of pregnancy centers.

Mr. ROY. Just to finish here, do you think that is an appropriate use of Federal authority to say target Mr. Vaughn or say Ms. Edl who had been in Yugoslavia and effectively gulags and now at 89 years old is being targeted by the government of the United States?

Ms. HAWLEY. No. As John Adams would say, we are a government of laws, not of men. The Supreme Court has been clear that selective enforcement based on viewpoint is unconstitutional.

Mr. ROY. Well, thank you for your testimony. I appreciate it. With that, I will recognize the Ranking Member, Ms. Scanlon.

Ms. SCANLON. Thank you, Mr. Chair. Professor Waters, we seem to have conflated a lot of things here in suggesting that, inaccurately, that Mr. Vaughn was prosecuted for prayer.

You noted in your testimony that the FACE Act explicitly distinguishes between protective expressive speech and unlawful conduct. We have talked a lot about what is expressive speech, but the unlawful conduct includes things such as obstructing access to a clinic, does it not?

Ms. WATERS. That's correct. FACE explicitly makes clear that obstructing access to a reproductive health services clinic or a place of worship is a violation of FACE.

Ms. SCANLON. Mr. Chair, I would like to have unanimous consent to introduce the press release when Mr. Vaughn was convicted, six defendants convicted of Federal civil rights conspiracy in freedom of access to clinic entrance for obstructing access to reproductive health services in Tennessee.

Also, a *USA Today* article saying, "Tennessee Man Arrested for Blocking Access to Abortion Clinic, Not Praying."

Mr. ROY. Without objection.

Ms. SCANLON. Thank you. Recent data, Ms. Waters, from the National Abortion Federation shows that violence and threats directed toward abortion providers and their patients have risen. Can you speak about this escalating trend and particularly in light of this increasing threat to reproductive health services, does the FACE Act continue to be a relevant tool to protect doctors, nurses, patients, and volunteers who are seeking or providing abortion care?

Ms. WATERS. It continues to be a relevant tool to protect anyone who is providing reproductive healthcare services, including abortion care.

What we have seen is reports of escalating violence and more numerous violence, including things like blockades happening particularly in States that are protective of abortion care.

As I noted earlier, women seeking abortion care in many States now have to travel to States where abortion is legal, and it is safe. Because they were having to engage in that traveling, I think there has been a deliberate campaign to target some of the clinics where abortion care is still available.

Ms. SCANLON. In fact, the case that Mr. Vaughn was involved in, although he purports to say that he was simply praying, the jury rejected his argument and actually found him and his fellow protesters to have been guilty of actually obstructing these folks in this clinic for a period of three hours. The conspiracy element came from the fact that these folks came from all over. It was actually part of an organized effort in Tennessee where his incident occurred as well as other places around the country. Is that correct?

Ms. WATERS. It is my understanding that people traveled from several different jurisdictions and that there was indeed a conspiracy charge in this case.

Ms. SCANLON. We have also heard repeatedly that basically there is not any enforcement, or a blind eye being turned. I wanted to seek unanimous consent to introduce another DOJ press release just from a few months ago, "Three Defendants Plead Guilty to Civil Rights Conspiracy Targeting Pregnancy Resource Centers."

Mr. ROY. Without objection.

Ms. SCANLON. OK. Finally, to the extent that our colleagues are concerned about excessive use of force, that's something that the Members on our side of the aisle have been very interested in preventing excessive use of force in a variety of contexts. That's certainly not an issue exclusive to the FACE Act and perhaps that's something we need to pursue on another day. So, with that, I yield back.

Mr. ROY. I thank the Ranking Member. With that, I will recognize the gentleman from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chair. Professor Waters mentioned the cases of violence and vandalism directed at abortion clinics that gave rise to the FACE Act, but I think she left out all the cases of violence and vandalism that were directed at churches and pregnancy centers. That's what convinced Congress to make FACE even handed to protect both sides of the controversy. Am I correct, Ms. Hawley?

Ms. HAWLEY. That's absolutely correct. The plain text of the FACE Act applies to pregnancy centers—

Mr. MCCLINTOCK. Everybody on both sides. There is no right to impede a person's access to abortion clinics, pregnancy centers, churches, or any other lawful pursuit. There is no right to vandalize those facilities or threaten the people who use them. There is every right to peaceably assemble to express one's political or religious beliefs.

So, I have got no problems with the FACE Act on its face so to speak. As I read it, it forbids blockading abortion clinics and churches. As I read it, it protects the right of individuals to peaceably assemble. So, what am I missing here?

Ms. HAWLEY. So, I'm afraid that the promise of equal application of the FACE Act has really been a false one. As Chair Roy discussed, there have been 55 individuals prosecuted.

Mr. MCCLINTOCK. OK. So, is that the fault of the act itself or is that the fault of the way the act is enforced?

Ms. HAWLEY. That specific concern is the fault of the enforcement.

Mr. MCCLINTOCK. OK. That's what I thought. I heard Mr. Nadler say that, well, instead of repealing the FACE Act, and I am not the least bit sure that we should, Republicans ought to urge the Trump Administration to prioritize enforcement of the FACE Act on behalf of prolife activists.

Well, I find this just as offensive as prioritizing enforcement of the FACE Act on behalf of pro-abortion activists. Both courses are deeply destructive to the rule-of-law and to the concept of equal protection of the law. This is the reason justice is always depicted as being blindfolded because it shouldn't matter what anyone's personal opinions are. The laws are to be applied equally to all.

I hope I misunderstood what the Ranking Member said in his prepared remarks because it seems to confirm the complaint that this law is susceptible to political abuse. In fact, it sounded like he was encouraging us to abuse it, which I find bizarre.

So, if we are to slant enforcement of the law depending on who is in power, it seems to me we have lost the fundamental principle of equal justice under law. This problem is not limited to the FACE Act. We have seen selective enforcement in different treatment between say George Floyd rioters and January 6th rioters or the Lois Lerner selected enforcement against Tea Party activists a few years ago.

Should we, perhaps, instead of looking—repealing the FACE Act, look at clearly defining what selective enforcement looks like and then applying criminal or civil penalties to such conduct?

Ms. HAWLEY. So, that could be a good first step. I agree wholeheartedly that the FACE Act as is every criminal statute should be applied even handedly. That is the promise of our republic. I would say—

Mr. MCCLINTOCK. Because it is being administered with people with political biases, that is perhaps not always going to happen. It certainly is not happening in this case, but also it is not happening in a lot of other cases.

So, is there some law that you could recommend that would define what selective enforcement is, and sanction those who apply it in a biased manner?

Ms. HAWLEY. That is an interesting question. Selective enforcement is typically raised as a constitutional claim either under the equal protection clause or the First Amendment. So, if you had a Federal selective enforcement claim itself, you would have to think how that would play out. I do think that the constitutional cases provide a good sort of framework of reference.

What those cases provided that when parties are similarly situated, there is prosecutorial discretion. When you have similarly situated parties, the law requires that they be treated equally.

Mr. MCCLINTOCK. Mr. Crampton, very briefly, your thoughts on the subject.

Mr. CRAMPTON. Would you repeat the question, please, sir?

Mr. MCCLINTOCK. The question is, since these laws are subject to enforcement by individuals who have their own biases, is there a law we should be looking at that would identify what selective enforcement looks like and sanction it?

Mr. CRAMPTON. Actually, it is a very difficult area as Ms. Hawley mentioned. The selective enforcement case law, the precedents, are frankly, not entirely consistent. There is, because of the discretion afforded prosecutors across the board, a great deal of disagreement as to when that is too far, and they've transgressed the constitutional limits. It is frankly a matter for the courts, and we do really need more clarity in that area. I can't point you to another statute or a law that would help.

Mr. MCCLINTOCK. Any further thoughts you have on that, I would be interested in hearing.

Mr. CRAMPTON. Thank you.

Mr. ROY. I thank the gentleman from California. With that, I will recognize my friend from Texas, Mr. Hunt.

Mr. HUNT. Thank you, Chair. Weaponization, two-tier justice, prioritization. What do these words have in common? They describe the unspoken policy of the Biden Administration when it comes to justice. You can apply this unspoken policy to any Biden Administration agency.

Weaponization, Biden weaponized the DOJ to go after a former President for political purposes. He said Trump was undermining democracy. For two-tiered justice in the classified documents case, Biden directed the FBI to raid Mar-a-Lago, yet gently browsed the classified documents that were sitting in President Biden's garage.

For prioritization, Biden's FEMA Department in Florida only helped storm victims who didn't have Trump signs in their front yard. Think about that.

So, it should come to no surprise that we are talking about another example of weaponization, two-tiered justice, and prioritization, in today's hearing.

We are here today to talk about the DOJ's selective enforcement of the FACE Act. It is aimed at assuring equal protection for both prolife and prochoice movements. Under the Biden Administration, I will let you guess whether more prolife or prochoice activists have been charged with more crimes.

The FACE Act has been the law of the land for the last 20 years. The Biden's DOJ, in just four years, has brought over a quarter of all FACE Act prosecutions. There are many examples, but I will highlight an egregious example.

In Mount Juliet, Tennessee, prolife activists were arrested for singing and praying in a hallway of a shared general medical office building featuring an abortion clinic.

They initially were faced with misdemeanor charges. Magically, 17 months later, the DOJ charged these Christians with Federal crimes. Among these charged was Eva Edl. Now 89 years old, she is a survivor of a Communist concentration camp in Yugoslavia after World War II. That is right. In Biden's America, you can escape a Communist concentration camp and then come to America and be arrested for praying.

Mr. Vaughn, thank you for being here today. I am glad that you avoided prison time as well, sir. Did you receive three years of supervised release. Is that correct?

Mr. VAUGHN. That is correct. After 18 months of presentencing supervision.

Mr. HUNT. Could you have ever imagined living in a country, this country, that you would be arrested for praying, singing, and providing sidewalk counseling?

Mr. VAUGHN. No.

Mr. HUNT. We, as a country, should have seen this coming. Under the COVID censorship regime that was the Biden Administration, they restricted churchgoers from attending church but allowed people to shop in liquor stores. I guess that's because Tito's and Crown Royal were the cure for COVID. Maybe we will never know.

Mr. Crampton, I have got to tell you something. You can probably imagine, sir, I am not a big fan of the KKK. I am a direct descendant of slavery, and I am also here to tell you that the Klan has been dead for a very long time.

Why in God's name would you evoke an act like this under these circumstances?

Mr. CRAMPTON. I wish I understood exactly what the logic was behind it as far as any legitimate reasoning, sir. What I do know is Sanjay Patel authored an article in 2022 for the DOJ's own internal kind of a law review magazine where he laid out why he suggested they use it. He was the first one to use it as the prosecutor in the District of Columbia case. That was because it would increase the penalty and because it is easier to prove conspiracy. You don't need what is called a predicate act under 18 U.S.C. 241, this conspiracy against rights statute.

Moreover, sir, if I may add, the conspiracy against rights depends on a Federal right.

Mr. HUNT. Yes.

Mr. VAUGHN. Traditionally, that was a constitutional right. Now, as we know, there is no Federal constitutional right to abortion. So, the right they are hanging that on is the very slender thread of a right to access reproductive health clinics.

So, it is a mystery, and it is such an unjust and excessive punishment, use of that statute, abuse of that statute that as I suggested in my opening remarks, it needs to be separately addressed.

Mr. HUNT. Of course it does. Thank you for answering the questions, sir.

The selective prosecution of FACE Act violations is two-tiered justice at its finest. The Biden Administration Attorney General

Merrick Garland's prosecution of their political opponents is real, and it is pervasive.

They painted January 6th protesters out to be violent criminals, yet President Biden pardoned his son, Hunter Biden, and many other actual felons because they were on his side of the aisle, period.

Peaceful January 6th protesters are in jail while violent criminals are pardoned and roam free. Thank God, they are going to get out of here on January 20th. I can guarantee you that.

Merrick Garland surveilled parents at school board meetings who were simply expressing their right to free speech. Garland, however, did nothing about ANTIFA while cities in this country were being burned to the ground. Biden has been on the wrong side of justice every single time, and we know it. The American people know it. We have expressed our sentiments just last month. I can assure you we will have justice back in America on January 20th.

Thank you all very much for being here.

Mr. ROY. I thank the gentleman from Texas, his time having expired. I would ask consent—I have been receiving correspondence from folks from all over the country asking us to repeal the FACE Act and stop what is happening to people like Mr. Vaughn and like Ms. Edl. I would ask unanimous consent to insert this into the record.

Without objection, does the gentleman from Ohio seek recognition?

Chair JORDAN. I was hoping for five minutes of questions. Imagine that. No, I appreciate it.

Mr. Vaughn, so the day that you were at the—you were praying and singing at the clinic, did the local police show up?

Mr. VAUGHN. They did.

Chair JORDAN. Were they called by the clinic?

Mr. VAUGHN. They were.

Chair JORDAN. I want to get all the facts right. Maybe you did this in your opening statement. I apologize. I had to step out a couple of times during the hearing.

So, you are in front of the abortion clinic. You are praying and singing. You were on the public sidewalk.

Mr. VAUGHN. It was a multiuse building. We were in the hallways of a public building.

Chair JORDAN. OK.

Mr. VAUGHN. Outside the door of the abortion clinic.

Chair JORDAN. There were other people with you?

Mr. VAUGHN. Correct.

Chair JORDAN. You were charged with conspiring to stop people from going into the clinic and their rights as Mr. Crampton was just talking about.

Mr. VAUGHN. Correct, yes.

Chair JORDAN. Did you physically push anyone, hold anyone back? Did you lock arms with your coconspirators or what did you do?

Mr. VAUGHN. No, I did none of that.

Chair JORDAN. None of that.

Mr. VAUGHN. I kneeled and prayed on the side of the hallway at one point. Sang hymns when they were singing. I interacted with

the police department. The local police got a little agitated at one point, and they came and shoved a couple people. I walked back down the hallway with them and tried to assure them that these people were peaceful and keeping peace with the police department.

Chair JORDAN. Yes.

Mr. VAUGHN. I ultimately talked with the negotiator and the police chief along with another member and led to a peaceful resolution. People that wanted to be—

Chair JORDAN. No one was arrested that day?

Mr. VAUGHN. There were eight people arrested.

Chair JORDAN. Were you arrested that day?

Mr. VAUGHN. I was not.

Chair JORDAN. You were not arrested that day.

Mr. VAUGHN. No, sir.

Chair JORDAN. OK. Then what day was that? What day were you there at the clinic praying and—

Mr. VAUGHN. That was March 5th.

Chair JORDAN. March 5th of what year?

Mr. VAUGHN. 2022—I'm sorry, of 2021.

Chair JORDAN. 2021.

Mr. VAUGHN. Correct, yes.

Chair JORDAN. Because it is a year later. It just happens to be March 5th, again?

Mr. VAUGHN. It is October 5, 2022.

Chair JORDAN. October 5th, excuse me.

Mr. VAUGHN. Yes.

Chair JORDAN. So, a year later—that is right, October 5th. So, almost a year later is when the Federal police shows up, the FBI shows up at your house?

Mr. VAUGHN. Correct, yes.

Chair JORDAN. In that 11 month timeframe, what kind of contact did you have with any law enforcement or any prosecutor or anything like that?

Mr. VAUGHN. None.

Chair JORDAN. None?

Mr. VAUGHN. None whatsoever.

Chair JORDAN. So, you weren't arrested that day and other people were. You didn't do anything wrong that day. In fact, when there was some concern, you tried to de-escalate it.

Mr. VAUGHN. Right.

Chair JORDAN. Nothing happens. Local police said, this Mr. Vaughn guy, he's doing the Lord's work, whatever they said. They didn't do anything. Then 10 months later, the FBI shows up at your door.

Mr. VAUGHN. That's 18 months later, correct? They showed up hard and heavy. That day, the police in their media press release complimented how peaceful and orderly we were, how we interacted with them. The lead detective—I'm sorry, the lead negotiator testified for us at Federal trial.

Chair JORDAN. So, the police—

Mr. VAUGHN. We had good relations with the police. It has been reported out—if I can, I would love to read just a quick summary.

Chair JORDAN. Do you know if the FBI talked to the local police prior to them coming to your house and arresting you?

Mr. VAUGHN. They did not. I asked them that question on the hour-long ride to Nashville in the back of the car. I asked “Did my sheriff know or anybody know?” and replied “No, we didn’t bother telling them.”

Chair JORDAN. They just showed up.

Mr. VAUGHN. They showed up.

Chair JORDAN. If I remember the facts again, it was early morning. Show up.

Mr. VAUGHN. 7:15 a.m. in the morning.

Chair JORDAN. You open the door, you and your wife and children right there.

Mr. VAUGHN. Correct, yes.

Chair JORDAN. They had some of your kids held off on a different part of the property.

Mr. VAUGHN. Right.

Chair JORDAN. OK. Where was the conspiracy? What were you conspiring to do? Because I don’t see the—I am troubled, as the legal professionals Ms. Hawley and Mr. Crampton pointed out, I am troubled by this whole conspiracy thing. I don’t see any conspiracy on your part.

Mr. VAUGHN. No, the conspiracy, I ideologically agreed that abortions should stop. I was in the hallway with other people that did that.

Chair JORDAN. Were there like emails at the trial where you said, “we are all going to meet at the clinic on this day?” Is that how they demonstrate some concern?

Mr. VAUGHN. There was no evidence like that presented as to me. The only thing they showed—that piece of the trial was my driver’s license. It indicated that I lived an hour from the clinic and drove an hour. So, that was the tie to the conspiracy.

Chair JORDAN. If the FBI called you said, “Mr. Vaughn, we are going to charge you with this crime. Can you show up and meet us at the local FBI office or whatever, Nashville,” I think you said, you would have called your—you would have got legal counsel.

Mr. VAUGHN. Absolutely.

Chair JORDAN. You have got Mr. Crampton. You would have showed up whatever day they told you, right?

Mr. VAUGHN. Sure. Absolutely.

Chair JORDAN. Instead they came to your house. Yes, it’s crazy.

Mr. Crampton, what are traditional Catholics radical?

Mr. CRAMPTON. Only in the eyes of extremists of the Biden Administration.

Chair JORDAN. Yes, only in the eyes of the people who show up at 6 a.m. in the morning and arrest a guy when the local police, “wanted to give him a medal.” Only they are the people who are going to say, the pure traditional Catholic, you are an extremist. You are a radical.

Mr. CRAMPTON. I am afraid so.

Chair JORDAN. Ms. Hawley, I got 32 seconds. I feel bad. I will give you the last 30 seconds. Anything you want to add to the discussion?

Ms. HAWLEY. Thank you, Congressman Jordan. One thing I would like to mention is that the FACE Act is on top of State and local law. So, as the Members of Congress have recognized before, this would not allow criminal conduct to go unpunished.

Every State has trespass laws, has nuisance laws, and has those sorts of things that are perfectly capable—

Chair JORDAN. We saw it in the example.

Ms. HAWLEY. Exactly. Similarly,—

Chair JORDAN. When they arrested—any of the eight people that the local police arrested, Mr. Vaughn, did any of them get charged by the FBI? How many of them? All of them?

Mr. VAUGHN. All of them.

Chair JORDAN. All of them. OK.

Mr. VAUGHN. They got double charged.

Chair JORDAN. They got double charged.

Mr. VAUGHN. They got local charges and Federal.

Chair JORDAN. They obviously did something wrong, and you didn't.

Ms. HAWLEY. Similarly, with Mr. Houck, who I know has testified to this Committee, the State and local prosecutors declined to prosecute. They made a Federal case out of it. He was acquitted by a jury of his peers. An Obama-appointed judge noted that this was stretching the FACE Act a little thin.

Chair JORDAN. No kidding. Thank you. Thank all our witnesses. I want to thank the Chair for his good work on dealing with this piece of legislation.

Mr. ROY. I thank the Chair, the gentleman from Ohio. I thank the witnesses. This concludes today's hearing.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record. Without objection, the hearing is adjourned.

[Whereupon, at 4:24 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Constitution and Limited Government can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=117765>.