

Statement of Judith Appelbaum for the House Judiciary Committee  
Addressing Mischaracterizations of the Freedom of Access to Clinic Entrances Act  
June 9, 2025

I am pleased to provide this statement for the House Judiciary Committee record on H.R. 589, the FACE Act Repeal Act of 2025.

I am very familiar with the Freedom of Access to Clinic Entrances Act (FACE) and its history because I had lead staff responsibility for drafting FACE and moving it to enactment when I served as Counsel to Senator Edward M. Kennedy on his Judiciary Committee staff, 1992-1995. Sen. Kennedy was the chief sponsor of the Senate bill, which became the basis for the bill passed by the House as well. I led the staff work throughout the bill's drafting and introduction, committee hearings and markups, negotiations within the Senate and with the House, floor debates, Conference Committee action, debate on the Conference Report, and Presidential signature. I also have monitored litigation of FACE in subsequent years and I generally stay current on developments involving FACE.

I have seen blatant distortions of FACE and its Department of Justice enforcement, and I fear that those seeking repeal of the law have been ill-informed. I also fear that repealing FACE based on misinformation will allow – and even encourage – the kinds of harmful conduct that led to FACE's enactment: blockades around women's health clinics, which often shut down facilities and injured both patients and providers; acts of violence and threats of violence against doctors and other providers (even murder); and destruction of clinic property. The FACE record also showed that the affected clinics often provided not only abortion but a full range of women's health care including contraception, STD treatment, prenatal care, and well-baby care. The charred ruins of a baby scale in a fire-bombed clinic in Montana, shown in a photo that is in the Senate hearing record, is implanted in my memory to this day.

In short, repealing FACE could result in serious harm to patients and providers as well as reducing access to a range of important health services. That is why I think it is important to address the misunderstandings of FACE that I have seen from proponents of its repeal:

**Why was FACE enacted and what does it do?**

FACE was enacted in 1994 in response to a nationwide campaign using violence and other extreme tactics to bar access to abortion and other reproductive health services. This conduct included clinic blockades and invasions, bombings, arson, death threats, assaults, and outright murder of a Florida doctor. State and local laws and law enforcement were proving inadequate, so Congress determined that a new federal law was needed. To put a stop to such conduct, the law created criminal penalties and civil remedies against four categories of conduct: the use of *violence or threats of violence directed at people providing or obtaining reproductive health services, physical obstruction of the entrances to facilities providing those services, or damaging those facilities* – if any of those acts was undertaken in order to injure, intimidate or interfere with someone seeking to obtain or provide such services. 18 U.S.C. §248.

FACE was enacted with overwhelming bipartisan support, including from numerous Members of Congress in both parties who strongly opposed abortion but condemned the use of violent and extreme conduct to further that cause. Among prominent anti-abortion Members voting in favor were Sen. Mitch McConnell (R-KY), Sen. John Danforth (R-MO), and Minority Leader Bob Dole (R-KS).

**What unsupported charges are currently being leveled against FACE and its enforcement?**

Lead supporters of the bill to repeal FACE have claimed that the law is being “weaponized” to target anti-abortion activists because of their pro-life beliefs. Attacks that mis-state what FACE actually covers, and DOJ’s prosecutions under it, include:

*“Biden’s Department of Justice has brazenly weaponized the FACE Act against normal, everyday Americans across the political spectrum, **simply because they are pro-life.**”* Rep. Chip Roy (R-TX)

*“Joe Biden’s DOJ has weaponized this **constitutionally dubious law** against pro-life sidewalk counselors. . . .”* Sen. Mike Lee (R-UT)

*“Under the FACE Act, **peaceful actions like holding a sign, singing a hymn, or praying the Rosary, if conducted near an abortion mill, can result in jail sentences, massive fines and punitive damages by the party that feels it has been offended.**”* And: *“The FACE Act **prescribes harsh, mean-spirited punishments where pro-life individuals engage in acts of nonviolent civil disobedience.**”* Rep. Chris Smith (R-NJ, Pro-Life Caucus Chair)

**Is it true that FACE prohibits anything, or that DOJ has brought cases under FACE, “simply because [the perpetrators] are pro-life” or because a target of their conduct “feels it has been offended”?**

Not at all. Prosecutions have been based on the specific conduct that FACE prohibits: the use or threat of force; physical obstruction of the entrance to a reproductive health facility; or destruction of such a facility’s property – when such conduct intentionally injures, intimidates or interferes with persons (or attempts to do so) in order to prevent them from obtaining or providing reproductive health services. 18 USC §248(a). I am not aware of any case brought “simply because a defendant is pro-life” or because a target of the defendant might “feel offended.”

**Are FACE cases being brought against purely peaceful activities like “holding a sign, singing a hymn, praying the Rosary” or serving as a “sidewalk counselor” outside a clinic?**

No, as long as they do not *physically obstruct a facility’s entrance*. And FACE defines “physical obstruction” narrowly: rendering ingress or egress “impassable” or “unreasonably difficult or hazardous.” 18 USC §248(e)(4). FACE does not reach non-obstructive, peaceful protest, prayers or counseling outside a clinic, nor am I aware of any cases where DOJ has applied FACE to such activities, let alone to any that are merely “near” an abortion clinic as has been alleged.

Moreover, under FACE, “an offense involving exclusively a nonviolent physical obstruction” is subject to *lighter penalties* than other FACE offenses: six months maximum for a first offense (a misdemeanor) and 18 months maximum for a subsequent offense – and there are no mandatory minimum penalties in FACE. 18 USC §248(b). These plainly are not “harsh, mean-

spirited punishments.” Congress recognized that in these circumstances, lighter penalties would be appropriate.

Finally, there was an important *reason* for Congress to include coverage of non-violent physical obstructions in FACE: to stop the widespread obstructions of facility entrances that (among other tactics) were seriously interfering with access to reproductive health services.

### **Is FACE “constitutionally dubious”?**

No. On the contrary, federal courts across the country have upheld FACE in repeated challenges to it. Moreover, the U.S. Supreme Court favorably cited FACE in *McCullen v. Coakley*, 573 U.S. 464 (2014). There the Court struck down a state law barring anti-abortion protests within 35 feet of abortion clinics, even on public sidewalks, holding that it violated the First Amendment because it burdened more speech than necessary to protect public safety. What is the relevance to FACE? *In the opinion for a unanimous Court, Chief Justice Roberts wrote that the state “could enact legislation similar to the Freedom of Access to Clinic Entrances Act, 18 USC §248(a)(1)” and quoted the operative language of FACE – clearly signaling that such an approach would withstand constitutional scrutiny.*

That conclusion is consistent with well settled precedents holding that the kinds of conduct FACE prohibits – violence, threats of harm to someone (if “true” threats as opposed to mere hyperbole), obstructions of entrances to covered facilities, and destruction of property – are entitled to no Constitutional protection. Indeed, many such prohibitions exist elsewhere in federal and state laws. And as an added safeguard against the application of FACE to forms of protest that *are* constitutionally protected, FACE contains this provision: “Nothing in this [law] shall be construed– (1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution. . . .” 18 U.S.C. §248(d)(1).

FACE also rests on solid ground for Congress’s authority to enact it. Congress relied on the Commerce Clause of the Constitution as well as Section 5 of the Fourteenth Amendment and developed an extensive factual record in support of its Commerce Clause authority. *See* Joint Explanatory Statement of the Committee of Conferees to S. 636, Rpt. 103-488, 103<sup>rd</sup> Congress (May 2, 1994) at pp. 7 -8, “Findings and Purpose”; Report of Senate Committee on Labor and Human Resources, Rpt. 103-117 (July 29, 1993) at pp. 30-33; Hearing Before the Senate Committee on S. 636 (May 12, 1993), S. Hrg. 103-138 at pp. 96-99. This record showed that reproductive health providers are involved in interstate commerce both directly and indirectly by purchasing medical supplies and equipment across state lines and in other ways; that their patients engage in interstate commerce by traveling from one state to another to obtain services; that clinic employees sometimes travel across state lines to work; and that the conduct that FACE addressed negatively affects interstate commerce by, for example, forcing clinics to cease operating. Not surprisingly, on that record, *eleven* Circuit Court decisions have upheld Congress’s constitutional authority to enact FACE, and not one has rejected it.

**How has DOJ enforced FACE in recent years?** DOJ cases brought under FACE have challenged conduct that is clearly prohibited by the statute and well outside of constitutional protection, including blockades and other physical obstructions of facility entrances, clinic invasions, threats of violence (e.g., to burn down a clinic), and actual firebombing of a clinic. Numerous cases have resulted in convictions or guilty pleas. Summaries of DOJ's FACE cases from 2011-2023 were collected on DOJ's website and found [here](#) but do not appear on the site now. Subsequent FACE cases are still reported in DOJ press releases on its website. A few recent examples:

- Several defendants [were found guilty under FACE](#) in separate jury and bench trials in D.C. for using force, threatening to use force, and physically obstructing access to a clinic. They had organized an invasion of a D.C. clinic and implemented it by forcing entry into the clinic; injuring a nurse; using chains and locks to barricade the facility; and causing a patient to climb through a window to gain access while another patient lay in the hallway outside in physical distress.
- A California man [pleaded guilty](#) to a FACE violation (and other federal offenses) for conduct that included firebombing a Planned Parenthood clinic in order to terrorize patients and providers there. He and a co-defendant ignited and threw a Molotov cocktail at the clinic, which struck the entrance and started a fire, and then fled the scene.
- A [jury convicted seven MI defendants](#) for blocking a clinic entrance with their bodies so that patients and employees could not enter. One patient and her husband had scheduled an appointment with the clinic after learning that their fetus suffered fetal abnormalities, and their inability to enter the clinic caused a real threat to her health.
- An Ohio man [pleaded guilty](#) to a FACE violation for making a credible threat to burn down a Planned Parenthood building because reproductive health services were provided there.
- A jury found an anti-abortion [activist guilty of FACE](#) violations for blocking a clinic entrance in NY City by pressing her body against the door and refusing to move, directing her fellow protestors to help her obstruct the entrance, threatening employees that she would "terrorize" them to the point that they would close the clinic, bragging about the patient appointments she thwarted, shoving clinic employees outside the facility, and preventing an employee from escorting a patient inside – injuring the employee's hand in the process.

**Is it true that DOJ has brought FACE cases only involving conduct by anti-abortion activists, and that DOJ and the FBI have ignored attacks targeting centers that counsel against abortion?**

No. DOJ *has* charged FACE violations by *pro-choice* activists who have been caught engaging in unlawful conduct targeting pro-life centers. In a Florida case, three people pleaded guilty under FACE for spray painting pro-life "pregnancy help centers" with threatening messages. FACE includes such facilities in the definition of "reproductive health services," 18 U.S.C. §248(e)(5), but federal authorities have explained that investigating threats and disruptions at such centers are difficult to prosecute because people who vandalize those facilities have sought to evade

accountability by taking covert actions when witnesses are unlikely to be present – unlike anti-abortion activists who sometimes live-stream their activities and stage sit-ins during business hours. [Washington Post, Oct. 15, 2023, “Justice Dept. focuses on violence by protesters at abortion clinics.”](#)

And of course, if FACE were repealed, *no* cases in support of pro-life counseling centers could ever be brought under it, which raises the question why those who would like to such cases to be brought would want FACE repealed.

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I hope this information is helpful to the Committee.