

**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)¹ 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.² As detailed below, FACE protects both people and places from unlawful conduct while explicitly excluding protected speech, such as peaceful protest, from its purview.

¹ 18 U.S.C. 248

² 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.³

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.”⁴ 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.”⁵ Finally, FACE also prohibits attempts to engage in the conduct outlined above.⁶

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).⁷ “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.”⁸

Third, FACE explicitly distinguishes between protected expressive speech and unlawful conduct. Expressive speech activities such as “peaceful picketing or other peaceful demonstration” are

³ 18 U.S.C. 248 (a)(1)

⁴ 18 U.S.C. 248 (e)(5)

⁵ 18 U.S.C. 248 (a)(2)

⁶ 18 U.S.C. 248 (a)(1) and (a)(2)

⁷ 18 U.S.C (a)(3)

⁸ 18 U.S.C. 248 (e)(1)

flatly excluded from FACE's purview.⁹ Unlawful conduct, such as obstruction or violence, is prohibited by FACE.¹⁰ 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 1993¹¹ 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."¹² 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

⁹ 18 U.S.C. 248 (d)(1) and (d)(2)

¹⁰ 18 U.S.C. 248(a)(1)-(a)(3)

¹¹ U.S. House of Representatives Committee on the Judiciary Report 103-306, Freedom of Access to Clinic Entrances (October 1993) [hereinafter House Judiciary Report]

¹² House Judiciary Report at page 6

and their families; and vandalism and destruction of property at facilities.”¹³ 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.”¹⁴ 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.¹⁵

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.”¹⁶

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.”¹⁷ The Senate Report likewise noted “nothing in the Act is intended to prohibit expression protected by the First Amendment to the Constitution.”¹⁸ The legislative history is also clear that FACE is

¹³ House Judiciary Report at page 6

¹⁴ House Judiciary Report at page 6-7 (quoting National Abortion Federation statistics)

¹⁵ U.S. Senate Committee on Labor and Human Resources Report 103-117 (July 1993) at pages 3-12 [hereinafter Senate Report]

¹⁶ House Report at pages 3,10; Senate Report at pages 17-21

¹⁷ House Judiciary Report at page 13

¹⁸ 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.”¹⁹

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.²⁰ 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%.²¹

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.

¹⁹ House Judiciary Report at page 3

²⁰ National Abortion Federation Report, 2022 Violence and Disruption Statistics at page 2

²¹ National Abortion Federation Report, 2022 Violence and Disruption Statistics at page 8

