

Case No. 16-15360

**United States Court of Appeals
for the Ninth Circuit**

NATIONAL ABORTION FEDERATION (NAF),

Plaintiff-Appellee,

v.

**THE CENTER FOR MEDIAL PROGRESS, BIOMAX PROCUREMENT
SERVICES LLC, DAVID DALEIDEN (AKA “ROBERT SARKIS”), AND
TROY NEWMAN,**

Defendants-Appellants,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
THE HONORABLE WILLIAM H. ORRICK, III PRESIDING

**BRIEF OF PHYSICIANS FOR REPRODUCTIVE HEALTH AS *AMICUS
CURIAE* IN SUPPORT OF PLAINTIFF**

Kristen Law Sagafi (Cal. Bar No. 222249)
Martin D. Quiñones (Cal. Bar No. 293318)
TYCKO & ZAVAREEI LLP
483 Ninth Street, Suite 200
Oakland, CA 94607
Telephone: (510) 254-6808
Facsimile: (202) 973-0950
E-mail: ksagafi@tzlegal.com
E-mail: mquinones@tzlegal.com

Attorneys for Amicus

CORPORATE DISCLOSURE STATEMENT

Amicus has no parent corporation and no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF AUTHORITIES iv

INTEREST OF AMICUS1

INTRODUCTION AND SUMMARY OF THE ARGUMENT2

ARGUMENT6

I. NAF CONFIDENTIALITY AGREEMENTS ARE ABSOLUTELY NECESSARY.6

 A. The agreements protect NAF members’ privacy and professional interests, which allow for candid discussions of the challenges they face.6

 Many of the doctors in our network depend on the remarkable sense of community and trust that is fostered at NAF meetings. This allows providers to freely discuss their work and learn from each other.....6

 B. The agreements allow NAF to fulfill its mission of setting standards for abortion care and develop continuing medical education programs and resources for abortion providers and other health care professionals.12

II. NAF MEMBERS HAVE THE RIGHT TO ASSOCIATE IN PRIVACY AND SAFETY AT NAF MEETINGS.16

 A. The ability to associate in privacy and safety is necessary in order to discuss their profession and to safely practice their profession.16

 B. Diminishing the right to associate in privacy and safety will negatively affect the attendance and quality of NAF meetings and could put attendees at risk.18

CONCLUSION21

TABLE OF AUTHORITIES

Cases

<i>Brooks v. Vallejo City Unified Sch. Dist.</i> , No. 2:09-CV-1815 MCE JFM PS, 2009 WL 10441783 (E.D. Cal. Oct. 30, 2009).....	4
<i>Cohen v. Cowles Media Co.</i> , 501 U.S. 663 (1991).....	4
<i>ITT Telecom Prods. Corp. v. Dooley</i> , 214 Cal. App. 3d 307 (Ct. App. 1989).....	4
<i>Leonard v. Clark</i> , 12 F.3d 885 (9th Cir. 1993).....	4
<i>Nat’l Abortion Fed’n v. Ctr. for Med. Progress</i> , No. 3:15-cv-03522-WHO (N.D. Cal. Feb. 5, 2016).....	2, 3, 4, 5, 6, 18, 19, 21
<i>Perricone v. Perricone</i> , 292 Conn. 187 (2009).....	4

Other Authorities

Declaration of Vicki Saporta.....	4, 6, 19
NAT’L ABORTION FED’N, 2015 VIOLENCE AND DISRUPTION STATISTICS (April 2016).....	6, 21
NAF App. of Exs. in Supp. of Mot. for Preliminary Inj.....	6
<i>Provider Voices</i> , PHYSICIANS FOR REPROD. HEALTH, http://prh.org/provider-voices (last visited June 6, 2016).....	1

INTEREST OF AMICUS¹

Physicians for Reproductive Health (“Physicians”) is a doctor-led nonprofit that seeks to assure meaningful access to comprehensive reproductive health services, including contraception and abortion, as part of mainstream medical care. Founded in 1992 by Dr. Seymour Romney and a small group of concerned physicians, the organization has grown into a national organization that represents medical professionals who practice in a range of fields: obstetrics and gynecology, pediatrics, family medicine, psychiatry, cardiology, neurology, radiology, and more. Hundreds of physicians have participated directly in Physicians’ training and education activities, and many more rely on the medical resources that the group produces.

In public discussions of reproductive health care, Physicians seeks to share the doctor’s distinctive voice, expertise, and experience. To that end, Physicians has for many years gathered and published the stories of doctors who provide reproductive health services. Some of these written and video accounts are featured on Physicians’ website. *Provider Voices*, PHYSICIANS FOR REPROD. HEALTH, <http://prh.org/provider-voices> (last visited June 6, 2016).

¹ Per Federal Rule of Appellate Procedure 29(a), Amicus requested and obtained the consent of the parties to file this brief. No counsel for a party authored the brief in whole or in part; no party or party’s counsel contributed money to fund preparing or submitting the brief; and no person other than Amicus or its counsel contributed money intended to fund preparing or submitting the brief.

As the District Court found, the defendants voluntarily and knowingly signed confidentiality agreements to gain entry to meetings of the National Abortion Federation (“NAF”). *Nat’l Abortion Fed’n v. Ctr. for Med. Progress*, No. 3:15-cv-03522-WHO (N.D. Cal. Feb. 5, 2016) (ECF No. 354 at 28-29). The District Court also recognized the need for confidentiality agreements for the meetings, citing legitimate interests in the rights to privacy, security, and association by maintaining confidentiality of presentations and conversations. *Id.* at 2. A release of confidential information by the defendants in contravention of the confidentiality agreements they signed would directly impact doctors in the Physicians network. The District Court also found that the appellants “infiltrated the NAF meetings with the intent to disregard the confidentiality provisions and secretly record participants and presentations at those meetings.” *Id.* at 34. If parties like the defendants were permitted to break the agreements they sign, the ability of doctors to participate in educational opportunities and communicate within a secure community like the NAF meeting would be compromised.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Meetings held by NAF are valuable because they provide a safe space for a community of people involved with abortion care, a line of medical practice that unfortunately can be highly stigmatized. The District Court noted the interests of NAF and its members’ expectations of privacy, their ability to perform their

professions, and their personal security. *Id.* at 32. At NAF meetings, a provider receives support from the community, can speak freely amongst others experiencing the same challenges, and benefit from the education and resources to become a more skilled provider. The District Court referred to the extensive evidence that in order for NAF to “fulfill its mission and allow candid discussions of the challenges its members face—both professional and personal—confidentiality agreements for NAF meeting attendees are absolutely necessary.” *Id.* The training and education opportunities at NAF meetings include involvement in current medical research that furthers provision of safe, patient-centered, and compassionate care.

This brief addresses the necessity of keeping NAF meetings secure and confidential. It combines legal arguments with first-person narratives from abortion providers themselves. The providers’ powerful reflections demonstrate the value of the meetings and the necessity for them to remain secure. The brief offers two core arguments:

I. NAF’s policy is that all individuals attending its conferences must sign confidentiality agreements. *Id.* at 6-7. The agreements are one part of a multi-faceted security program implemented to ensure the safety of abortion providers. *Id.* at 16-17. The level of security at the meetings allows providers to discuss the professional and personal challenges they face without the threat or fear of harassment, violence, or retaliation. This safe and secure environment also facilitates implementation of

evidence-based, patient-centered abortion care. *See e.g.*, Declaration of Vicki Saporta (“Saporta Decl.”) (ECF No. 3, Ex. 34 ¶¶ 11, 16).

As the District Court found, the appellants voluntarily and knowingly signed the confidentiality agreements. *Nat’l Abortion Fed’n v. Ctr. for Med. Progress*, No. 3:15-cv-03522-WHO (N.D. Cal. Feb. 5, 2016) (ECF No. 354 at 28-29). Courts have consistently upheld restrictions on speech where parties to a contract agree to those restrictions and knowingly waive their First Amendment rights to free speech. *See Leonard v. Clark*, 12 F.3d 885, 886 (9th Cir. 1993); *Brooks v. Vallejo City Unified Sch. Dist.*, No. 2:09-CV-1815 MCE JFM PS, 2009 WL 10441783, at *5 (E.D. Cal. Oct. 30, 2009); *ITT Telecom Prods. Corp. v. Dooley*, 214 Cal. App. 3d 307, 317, 319 (Ct. App. 1989); *Perricone v. Perricone*, 292 Conn. 187, 202 (2009).

Regarding the defendants’ position that their alleged journalist occupation warrants the nullification of the confidentiality agreements, the Supreme Court has held that the “publisher of a newspaper has no special immunity from the application of general laws.” *Cohen v. Cowles Media Co.*, 501 U.S. 663, 670 (1991) (quoting *Associated Press v. NLRB*, 301 U.S. 103, 132 (1937)). In such a position, there is “no special privilege to invade the rights and liberties of others.” *Id.* The District Court rightly applied these standards in granting the motion for a preliminary injunction.

II. While the defendants assert that public interest outweighs the granting of the preliminary injunction, the District Court correctly weighed the public interest against NAF's right to create meetings in which health care providers may associate in privacy and safety to discuss their profession. Release of the recordings procured by fraud and taken in violation of the confidentiality agreements, which disclose identities of NAF members and compromise steps NAF members take to protect their privacy and professional interests, would run contrary to protections in California law. *Nat'l Abortion Fed'n v. Ctr. for Med. Progress*, No. 3:15-cv-03522-WHO (N.D. Cal. Feb. 5, 2016) (ECF No. 354 at 32). As discussed by the doctors who have attended the meetings, allowing the erosion of security measures would not only infringe on their right to associate in privacy and safety but would also erode the quality and attendance of the meetings. Providers would have to consider censoring their speech due to uncertainty as to their audience and the associated risks of speaking openly. The District Court noted that there was support in the record for NAF's contention that the appellants' goal is to falsely portray the operations of NAF's members through continued release of its deceptively edited videos as a part of its strategy to alter the political landscape and affect public perception. *Id.* at 35.

Providers may decide to no longer attend NAF events due to fear for their own safety and of exposure to harassment and violence. There is strong evidence showing a dramatic increase in threats, harassment, and violence following the release of the

Center for Medical Progress' videos. NAF App. of Exs. in Supp. of Mot. for Preliminary Inj. (ECF No. 226, Exs. 80-81) (internet articles and threats by commentators), (ECF Nos. 226-27, Exs. 83-94); *see also* Saporta Decl. ¶ 19; NAT'L ABORTION FED'N, 2015 VIOLENCE AND DISRUPTION STATISTICS (April 2016), *available at* <http://5aa1b2xfmfh2e2mk03kk8rsx.wpengine.netdna-cdn.com/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf>. The District Court concluded that "if the NAF materials were publicly released, it is likely that the NAF attendees shown in those recordings would not only face an increase in harassment, threats, or incidents of violence, but also would have to expend more effort and money to implement additional security measures." *Nat'l Abortion Fed'n v. Ctr. for Med. Progress*, No. 3:15-cv-03522-WHO (N.D. Cal. Feb. 5, 2016) (ECF No. 354 at 36). For these reasons, NAF meetings must remain secure and confidentiality agreements must be enforced.

ARGUMENT

I. NAF CONFIDENTIALITY AGREEMENTS ARE ABSOLUTELY NECESSARY.

A. *The agreements protect NAF members' privacy and professional interests, which allow for candid discussions of the challenges they face.*

Many of the doctors in our network depend on the remarkable sense of community and trust that is fostered at NAF meetings. This allows providers to freely discuss their work and learn from each other.

Lisa Perriera, MD, MPH

Dr. Lisa Perriera studied medicine at the State University of New York at Stony Brook. She went on to complete an OB-GYN residency at New York University. After residency, she completed a fellowship in Family Planning and her MPH degree at the University of Pittsburgh. She is currently the Ryan Residency Program Director at Sidney Kimmel Medical College at Thomas Jefferson University in Philadelphia and a provider at the Philadelphia Women's Center.

NAF is a community of people who get along well, that talk freely about the care we provide and the challenges we face that are very unique to abortion providers. You get to talk with doctors from around the country doing the same work as you. You learn from each other in a safe place. I gain knowledge every time I go to these meetings.

Sarp Aksel, MD

Dr. Sarp Aksel is a resident physician in OB-GYN at Montefiore Medical Center in New York, NY. He graduated cum laude from Cornell University, and received his medical degree from the Albert Einstein College of Medicine. During medical school, he served as the board chair of Medical Students for Choice and currently serves as a board member of Physicians for Reproductive Health.

NAF brings together the experience of being an abortion provider that I can't get anywhere else. I learn about challenges in other parts of the country; I learn from all kinds of providers. Sharing collective experiences is the most valuable part for me. Also the staff diversity—nursing staff, medical directors, clinic owners—there is a range of individuals contributing to the knowledge pool. The diversity of the

meeting is very rich. It would be detrimental to the community if NAF had to become even stricter on security. Because of the stigma that surrounds abortion, there can be a sense of isolation and it is great to see that you have an entire community supportive of abortion care—not just learning and studying, but also advocating for access to it as the following providers explain.

Suzanne Poppema, MD

Dr. Suzanne T. Poppema, a founding member of Physicians for Reproductive Health, served as board chair from 2007 to 2010 and as Immediate Past Chair from 2010 to 2011. She is the director of International Medical Consulting in Seattle, Washington, and is a retired Associate Professor of Family Medicine at the University of Washington School of Medicine. For many years, Dr. Poppema was medical director of an abortion clinic in the Seattle area, where she led some of the first clinical trials of mifepristone medication abortion in the United States. She is the author of Why I am an Abortion Doctor (1996). Dr. Poppema is a past board chair of the National Abortion Federation.

As soon as I walked in [to my first NAF meeting], I knew that these were my people. There were amazing women involved like Dr. Jane Hodgson and Dr. Millie Hanson; the attendees all had a passion for safe and legal abortion care; non-physicians were included—it was a great place to learn about abortion and talk to other people about how to improve your care. At that time it was a source of professional support for doing work that did not always have a lot of professional support in your community. When we meet together we know that we all share a baseline belief in the autonomy and intelligence of women and our hope to provide abortion in as safe and comfortable way as possible. It would be a travesty to lose this important forum.

Sara Imershein, MD, MPH

In 1976, after graduating magna cum laude from the University of Pennsylvania, Dr. Sara Imershein began her medical education at Emory University and completed her residency in OB-GYN at the NYU-Bellevue Medical Center in 1984. Dr. Imershein had a private OB-GYN practice for over 30 years in Washington, DC, where she was regularly listed in Washingtonian Magazine's Top Doctors. Today, Dr. Imershein provides abortion at DC-area family planning clinics, and teaches at George Washington University (GWU) School of Medicine and GWU's Milken Institute School of Public Health.

I value the NAF meetings because they allow me to meet other colleagues free of stigma and fear. I don't have to worry about someone walking away from me once they learn I am an abortion provider. The NAF meeting is about public health science. Its attendees have all made a commitment to evidence-based medicine. I worry that outsiders would distract us from the purpose of providing safe, compassionate care. At gatherings such as NAF, we are able to presume that we are with supportive colleagues who have shared goals and understanding—that we are doing moral work and that we value safety, dignity, and compassion for our patients.

Lin-Fan Wang, MD, MPH

Dr. Lin-Fan Wang is a family physician. She received her MD from Albert Einstein College of Medicine and her MPH from Columbia University. She completed a residency in family medicine and a fellowship in family planning at the

Albert Einstein College of Medicine/Montefiore Medical Center in the Bronx, NY. She spent a year with Physicians for Reproductive Health as their Reproductive Health Advocacy fellow. As a family physician in Philadelphia, she provides primary care with a special interest in transgender health, adolescent health, and sexual and reproductive health. She trains medical students and family medicine residents in providing sexual and reproductive health services in the primary care setting.

The NAF meeting is wonderful because you go in and you feel like you are a part of a community of physicians and activists that have the same interests as you do. It's hard to find that kind of community on your own. I was a family doctor working with other family doctors, but as a family doctor providing abortion, you can feel isolated because many family physicians do not provide abortion care. So when you go to the NAF meetings you feel a part of a larger community with the same passion and interests in providing high quality care. I have met so many people who I wouldn't have met otherwise because it is difficult to connect unless you are physically together. You mingle with professionals from all parts of the country, with different practices, different focuses. A lot of students attend and I think it's a great opportunity for the new generation of providers to see the diverse work that is happening.

Willie Parker, MD, MPH, MSc

Dr. Willie J. Parker provides abortion care in Alabama and at Mississippi's lone remaining abortion clinic in Jackson. He served as Assistant Professor of Obstetrics and Gynecology in the John A. Burns School of Medicine at the University of Hawaii prior to completing a fellowship in Family Planning at the University of Michigan in 2008. He holds a BA from Berea College in Kentucky, an MD degree

from the University of Iowa, a MPH from the Harvard School of Public Health, and a Master's of Science from the University of Michigan. Following residencies in OB-GYN at the University of Cincinnati and preventive medicine at the University of California, San Francisco, Dr. Parker was an Epidemic Intelligence Service Officer with the Centers for Disease Control. His more recent work has focused on violence against women, sexual assault, and women's reproductive health rights through advocacy and provision of contraceptive and abortion services. Dr. Parker is the incoming board chair of Physicians for Reproductive Health.

I attended my first NAF meeting in 2006. I was a fellow in family planning and we were encouraged to attend in order to build relationships and because of the strong didactic training around abortion. I remember feeling energized about being in a community that was unequivocal about providing abortion care for women. I had a chance to meet people I have heard of and been in awe of, like the late Dr. George Tiller and the late Dr. Millie Hanson—people who had provided abortion since it became legal. That was really critical for someone who was just starting a career in family planning. It was awe inspiring to be around all these people with so much skill and so willing to share with those of us who were newer.

Cassing Hammond, MD

Dr. Cassing Hammond is a board certified OB-GYN. He received his medical degree from the University of Missouri and completed his residency at the University of Rochester (1992). Dr. Hammond practices general obstetrics and gynecology and also directs the Northwestern Center for Family Planning and Contraception and Northwestern's Fellowship in Family Planning & Contraception. His subspecialty

interests include contraception and abortion among medically compromised patients; first and second trimester medical and surgical abortion; sterilization; gynecologic care of women with HIV; and gynecologic care of women with physical and cognitive disabilities. Dr. Hammond's current research focuses on how contraceptives modify transmission of the HIV virus. Dr. Hammond is a past board chair of NAF and a board member of Physicians for Reproductive Health.

The NAF meeting is the best abortion networking opportunity that I know about. There are people who make NAF their medical meeting for the year. The people who are in the field doing abortions—this is the one chance they really have to meet all year. What is just as valuable as the actual content are the opportunities outside of the meeting room—meeting people and hearing about challenges people face. This is unique to NAF. There may be only one or two other abortion providers in your community, or perhaps you are the only one. NAF provides that community for all levels of providers. The ability of NAF to restrict attendance and enforce confidentiality agreements is key to maintaining a community of shared interests and values. It is this sense of community that is an instrumental part of every NAF meeting.

- B. *The agreements allow NAF to fulfill its mission of setting standards for abortion care and develop continuing medical education programs and resources for abortion providers and other health care professionals.*

Doctors have commented on how the secure nature of the NAF meetings enable the candid conversations that are key to effective medical education. As shown below, they worry that not being able to have a secure meeting would undermine that critical objective.

Dr. Hammond:

What is just as valuable as the actual meeting content is what goes on outside—meeting people, hearing about challenges people face, hearing clinical stories. This is unique to NAF. Through conversations with others that happen at NAF meetings, you get a real sense of the current standard of care and best practices. A lot of providers, including those at academic settings, have the experience of working very independently without many opportunities to talk with colleagues. I've always felt very safe at NAF. I like being able to discuss things freely.

I think the close sense of safe community has helped the meetings become more rigorous and evidence-based. For example, content around NAF's Clinical Policy Guidelines and quality program present ideas to an engaged audience and provide an opportunity for interaction and discussion. NAF was one of the first places where I saw educational activities focused for administrative staff—so often meetings are focused on doctors and NAF included other people. I think another really important point is that because it's an intimate organization, NAF can adapt quickly to changes going on in the field and tailor presentations accordingly, such as when a session was created to discuss clostridium infection. The education NAF provides is very important to our community.

Dr. Poppema:

The best abortion providers in the country had banded together to make sure NAF members were guaranteeing quality care. The meetings drew physicians, Advanced Practice Clinicians, nurses, medical assistants, office managers, executive directors. The meetings were felt to be valuable for a lot of different groups of people in your office. It was such a real democratization of education around abortion care. It built centers of excellence in clinics across the country. For independent clinics, NAF meetings offered a sense of inclusion and support that you couldn't find anywhere else.

Eroding the safe spaces will make it harder to do evidence based training and education that makes abortion safer, which is exactly what the opposition wants. They [anti-abortion extremists] want people to be afraid to talk freely. But it is that exchange of ideas and dialogue that people learn from.

Dr. Imershein:

The NAF meetings and community were instrumental in my becoming an abortion provider. At the time of my first NAF meeting, I was working at an independent clinic. For providers at independent clinics, they need NAF to stay up to speed and be involved with the medical research. I value the NAF meetings because they enabled me to become a more skilled provider. At the first meeting I attended, I was stunned at all of the incredible rigorous science that had taken place in the time I was an ob-gyn generalist. I didn't start providing medication abortion until this time in my career. I was aware of it of course, but the training and education was not available to me until I went to the NAF meetings. The social science content has also helped me in my teaching of medical and public health students.

Dr. Perriera:

NAF is the organization that makes sure clinics are up to the great standards that we have. Abortion is incredibly safe and if you are a NAF member you are essentially assured it's a quality clinic. They do that not just by teaching clinicians, but also teaching the staff. It's not just about the medicine, but also thinking in a patient centered way. NAF meetings advance those objectives. Having a forum where you couldn't be sure that everyone shares the values of high quality compassionate abortion care would hamper my ability to learn and exchange information.

Dr. Wang:

The sense of a safe community is important because providers would not feel as comfortable speaking freely as they do and that is a big issue because sometimes we are talking about very complicated feelings or cases. That is a key aspect of the educational value of the meeting. It would also be harder to absorb content if you had to be constantly on your guard.

The medical aspects of the meetings have helped me as a provider. Content around safety, providing patient-centered care, new innovations—you might be able

to learn about these things in other settings and forums, but you don't always have the opportunity to discuss them in depth. The discussions fostered by the meetings are extremely helpful and unique to the NAF setting. And it isn't only abortion care, but other topics on sexual and reproductive health. I always make sure to attend the meeting because I learn so much from it. Every time I learn something that helps me to provide better care, more evidence based care for my patients.

Dr. Aksel:

I learn from the research presented, the dissemination of breakthroughs, and the sharing of best practices. That's the foundation of being able to provide compassionate care. Learning about the community experience is directly related to that. It's a safe forum for ideas to get generated and tossed around. NAF generally does a great job of vetting clinics and putting out guidelines that lead to better abortion care and a more standardized approach. Discussions from the meetings make it into NAF's guidelines on clinical practice. They are a contributing factor to quality abortion care.

Dr. Parker:

NAF is a forum for people to talk about the complexities of abortion care. When you learn from providers with more experience, you are exposed to that level of expertise, are able to receive constructive feedback, and investigate new approaches. Without a meeting like NAF, my learning would be more experienced based rather than a combination of experience and learning from others. In the way that any professional meeting where people come together to continue their growth and their quality, NAF has been successful.

People who do the work understand that medical provision is only one aspect; there are all kinds of other considerations that go into it. The most skilled people in abortion care engage at these meetings—this is what makes abortion care so safe and respectful. A multidisciplinary meeting would be the ideal of every aspect of health care. In that regard, the NAF meeting has been different and progressive in that it brings together everyone involved with the care in ways that other meetings do not.

II. NAF MEMBERS HAVE THE RIGHT TO ASSOCIATE IN PRIVACY AND SAFETY AT NAF MEETINGS.

A. *The ability to associate in privacy and safety is necessary in order to discuss their profession and to safely practice their profession.*

Because of the violence and inflammatory rhetoric directed at abortion providers, meeting attendees need and expect a level of security to protect their safety and achieve the educational and community goals of the meeting. The doctors explain.

Dr. Hammond:

I put together a clinically oriented session for this year's meeting. When I planned the session, I was asked repeatedly if it was going to be safe from infiltrators. People seem more on guard now and that is sad. We don't want people to feel inhibited professionally from saying what is on their minds.

I worry about being able to be candid and be open to meeting new attendees in the future. I was able to start a fellowship in family planning at Northwestern through personal relationships I developed at NAF. Now, years later, we have trained 15 fellows to provide high quality abortion care.

Without the security measures, people wouldn't feel as free to discuss. The younger providers really value the security—lots of parents with young children that are security conscious. But they are intimidated by what they have seen happen to some providers.

Dr. Perriera:

After the news that anti-abortion activists had infiltrated clinics and meetings and had made recordings, it made me careful of every word coming out of my mouth around people I don't know. When we talk about medicine with professional colleagues, we assume they will understand the medical terminology that health care providers use. When I can't vouch for someone, I don't feel as free to speak in the

way that I would with trusted colleagues. We make the assumption that attendees at NAF meetings are vetted medical professionals on the side of safe and legal abortion care.

Dr. Parker:

At a NAF meeting, you have a reasonable expectation of being safe and whatever you say will be received in context even if you meet someone new. With a secure meeting you don't have to be guarded about who is this person and wonder about their agenda. When we come together we know that people at this meeting hold similar values and respect for the work that we do. When someone nefarious can get into the meeting and take the information and distort it—all of this chills and undermines the nearly 40 years of continuing medical education, skill building, support and morale building.

Dr. Aksel:

The NAF meetings do a great job of creating a safe space to talk openly. If we started to be more limited, it feeds into the stigma that already exists. We need to hold onto being able to accommodate as many people as possible while keeping in mind the very real risks that some people face to their safety. It's the intimidation factor—I hate that it's out there. We are strong and we stand up for one another. It speaks volumes about the connection that the network has and that members have with one another.

Dr. Imershein:

If the meetings were open to anyone, the dialogue central to a scientific meeting would be lost because those not in the community would want to debate the morality of abortion. I worry that outsiders would distract us from the purpose of providing safe, compassionate care and threaten the shared values of the NAF community.

Dr. Wang:

The secure environment is extremely important to younger providers like me. You may not necessarily know how out you want to be or you may have young children or be in a community you perceive as potentially dangerous—you are still figuring out your career. It makes it more comfortable to speak out and to meet people and encourage your colleagues to attend because you know their safety is prioritized. When I found out the meeting had been infiltrated, I was in shock and felt so violated. It's a meeting where you feel like you are safe and in a safe space.

- B. *Diminishing the right to associate in privacy and safety will negatively affect the attendance and quality of NAF meetings and could put attendees at risk.*

The doctors agree that the NAF meetings would be altered if there were a change in security. As the District Court found, it is NAF policy that all people attending its conferences sign the confidentiality agreement in order to help ensure the safety of abortion providers. *Nat'l Abortion Fed'n v. Ctr. For Med. Progress*, No. 3:15-cv-03522-WHO (N.D. Cal. Feb. 5, 2016) (ECF No. 354 at 6-7). The District Court also noted that harassment, threats, and violent acts against NAF members and facilities has increased since the release of the CMP videos in July 2015. *Id.* At 32. Maintaining a secure meeting is critical to the safety of abortion providers. *See e.g.*, Saporta Decl. ¶¶ 12-13. The physicians below agree.

Dr. Wang:

I feel very safe in my community, but if I were in a community that wasn't supportive or I didn't feel safe, I would be hesitant to attend an open meeting out of fear of being outed. As a young provider you are never quite sure who to trust—you are still meeting people, still figuring out who your allies are. The NAF name means a lot. It means being in safe hands.

Dr. Imershein:

The NAF meetings raised my awareness of threats to abortion providers. I have learned how to take care of myself, but not be paranoid. I have learned about clinic security, personal security and protecting my physical being. I feel there are many people who would not be there but for the security. They need to live under the radar to be safe in their communities.

Dr. Aksel:

If you weren't sure of the community, it would close off a certain amount of the openness I felt at my first NAF meeting. To know that there might be some people that I shouldn't speak my mind in front of—as a young provider, that's a scary thought—that you wouldn't know who to trust. It would be terrible. I would want to stand up for what we do and say, but I also want to protect members from intrusive individuals that mean harm.

Dr. Perriera:

It gives me a level of comfort that it is a secure meeting. As a provider, I have to think about my safety. When I contemplate individuals going that don't share my mission of caring for patients and science and being supportive, it is unsettling. But, I am not going to be shamed or bullied into not going. However, there are other providers who are more private and need the support and be able to learn and speak freely; there are a number of providers who wouldn't attend if they felt their safety and security were at risk.

Dr. Poppema:

The providers in our community appreciate the tight security of the NAF meetings. Just think about it—at some meetings maybe 90% of America's abortion providers have been in attendance. For those that want to eliminate all abortion, well, we have seen doctors killed for providing abortions. Security is strict and rightly so.

Dr. Parker:

Given the extreme nature of people feeling hostility and aggression, the fact that efforts are made to make sure that we remain safe is important. Because we know the level of security, it allows me to feel extremely safe. If it weren't secure, I'd have to do a risk assessment about whether I would come.

Having a meeting that was not secure would erode the camaraderie and mutual respect for honest intellectual exchange. If you could not be assured that someone didn't have an ulterior motive, wasn't misrepresenting their interests, it would undermine the purpose of the whole meeting. It's an educational meeting, peer bonding, socializing. To attend medical meetings you need proper credentials; other professional societies have standards. We know that people have been killed precisely for doing this work and any breach in transparency puts us in danger. Why would I knowingly go to a meeting where someone could be there that could do me physical harm? No one in their right mind would go to a meeting without a level of security. I wouldn't.

Violence against abortion providers is a critical issue. Past NAF members such as Dr. George Tiller and Dr. Barnett Slepian were killed precisely because they provided abortion care. (Since 1977, including the recent attack in Colorado, there have been 11 murders and 26 attempted murders due to anti-abortion violence. NAT'L ABORTION FED'N, 2015 VIOLENCE AND DISRUPTION STATISTICS). A decision in favor of the appellants not only would undermine the educational value of the NAF meetings, but setting a precedent that would erode the strong security surrounding a NAF meeting could put doctors and other providers in harm's way.

The District Court rightly concluded "it is not speculative to expect that harassment, threats, and violent acts will continue to rise if defendants were to

release NAF materials in a similar way.” *Nat’l Abortion Fed’n v. Ctr. for Med. Progress*, No. 3:15-cv-03522-WHO (N.D. Cal. Feb. 5, 2016) (ECF No. 354 at 32-33).

CONCLUSION

For these reasons, the decision of the United States District Court of the Northern District for California should be affirmed.

Dated: June 7, 2016

Respectfully submitted,

/s/ Kristen Law Sagafi

Kristen Law Sagafi (Cal. Bar No. 222249)

Martin D. Quiñones (Cal. Bar No. 293318)

TYCKO & ZAVAREEI LLP

483 Ninth Street, Suite 200

Oakland, CA 94607

Telephone: (510) 254-6808

Facsimile: (202) 973-0950

E-mail: ksagafi@tzlegal.com

E-mail: mquinones@tzlegal.com

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(c), I hereby certify that this brief contains 5,821 words, excluding portions of the brief exempted by Federal Rules of Appellate Procedure 32(a)(7)(B)(iii), and has been prepared in a proportionally spaced typeface using Times New Roman 14-point font.

Dated: June 7, 2016

/s/ Kristen Law Sagafi

Kristen Law Sagafi (Cal. Bar No. 222249)

Martin D. Quiñones (Cal. Bar No. 293318)

TYCKO & ZAVAREEI LLP

483 Ninth Street, Suite 200

Oakland, CA 94607

Telephone: (510) 254-6808

Facsimile: (202) 973-0950

E-mail: ksagafi@tzlegal.com

E-mail: mquinones@tzlegal.com

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All Participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: June 7, 2016

/s/ Kristen Law Sagafi

Kristen Law Sagafi (Cal. Bar No. 222249)

Martin D. Quiñones (Cal. Bar No. 293318)

TYCKO & ZAVAREEI LLP

483 Ninth Street, Suite 200

Oakland, CA 94607

Telephone: (510) 254-6808

Facsimile: (202) 973-0950

E-mail: ksagafi@tzlegal.com

E-mail: mquinones@tzlegal.com