

Freedom of Access to Clinic Entrances (FACE) Act

What is the Freedom of Access to Clinic Entrances Act?

The FACE Act makes it a federal crime to use force, the threat of force, or physical obstruction to injure, intimidate, interfere with, or attempt to injure, intimidate or interfere with somebody who provides or is obtaining reproductive health care services.

FACE also authorizes reproductive health care providers, the state attorney general, and/or the federal government to bring civil lawsuits to get injunctions against these activities, or to get monetary damages.

Why was FACE passed?

During the 1980's and early 1990's, clinic blockades were on the rise. Violence against abortion providers was escalating across the country, culminating in murders, attempted murders, acid attacks, bombings, and arsons. These incidents created urgency in Congress to pass new federal legislation to address the violence committed against reproductive health care facilities and providers and the denial of access to women seeking their care.

When was FACE passed?

FACE was passed by the U.S. Congress and signed into law by former President Clinton in May of 1994.

What does FACE prohibit?

FACE makes it illegal to intentionally commit a range of violent, obstructive and threatening activities toward reproductive health care providers and their patients. FACE also punishes anyone who intentionally damages or destroys a facility that provides reproductive health care services.ⁱ

Who does FACE protect?

- A facility or anybody who works at a facility that provides reproductive health care services.

- Patients of facilities that provide reproductive health care services.
- People accompanying patients, such as a parent, partner, or clinic escort.

How does FACE define "reproductive health services"?

FACE covers more than just abortion care. "Reproductive health services" include medical, surgical, counseling, or referral services related to pregnancy or the termination of pregnancy provided in a hospital, clinic, physician's office, or other facility that provides reproductive health care services.

How does FACE define important terms?

Congress included specific definitions in the Act to clarify the meaning of the law.

- **Who is a "reproductive health care provider"?** Anybody or any facility that provides reproductive health care services. Trained professionals who work in facilities are covered by FACE, as are staff necessary to the safe functioning of a facility, such as security guards, maintenance staff, and patient escorts. People who work in anti-choice reproductive health facilities, such as crisis pregnancy centers, are also covered by FACE. Protesters such as sidewalk counselors who try to give information to women outside of reproductive health care facilities are not covered.ⁱⁱ
- **What does the phrase "interfere with" mean?** Restricting a person's freedom of movement.
- **What does the term "intimidate" mean?** Placing a person in reasonable apprehension of bodily injury to him or herself or another.
- **What is considered a "physical obstruction"?** Rendering the entrance or exit of a facility that provides reproductive health care services impassable, or making access into and out of such a facility unreasonably difficult or hazardous.
- **What is considered a "threat"?** For FACE purposes, a definition which has been

adopted by the 9th Circuit Court of Appeals in *Planned Parenthood v. ACLA* is that a statement is a true threat if a reasonable person making the statement would foresee that it would be interpreted by the person to whom it is made as a serious expression to inflict harm or assault.ⁱⁱⁱ In assessing whether a statement is an unlawful threat, the context in which the statement was made must be considered, including the reaction of the listener.

What are some examples of behavior FACE prohibits?

- Any activity that blocks access to the entrance or obstructs the exit of a facility, including impairing cars from entering and leaving parking lots; impeding the progress of people trying to walk towards doors or through parking lots; or making getting in and out of the facility difficult or dangerous.
- Trespassing, such as clinic invasions.
- Acts of physical violence directed towards clinic employees, escorts or patients.
- Vandalizing a reproductive health care facility by gluing locks or spraying butyric acid.
- Threats of violence. For example, in 1996 a woman was found guilty of a FACE violation for yelling through a bullhorn to a doctor, "Robert, remember Dr. Gunn. This could happen to you..." (referring to a doctor who was murdered in 1993).^{iv} In another case, a man was found to have threatened force under FACE when he parked a Ryder truck outside of a clinic shortly after the bombing of a federal building in Oklahoma City where a Ryder truck had carried the explosives.^v
- Stalking a clinic employee or a reproductive health care provider.
- Arson or threats of arson.
- Bombings or bomb threats.

Does the prohibited behavior need to be repetitive to be in violation of FACE?

The Act does not require that the behavior occur more than once. If a singular event is heinous enough in the eyes of a U.S. Attorney, they can begin a criminal prosecution. However, if the

prohibited act is not as severe, proof of repetition will assist in either a criminal or a civil case.

What behavior does FACE not prohibit?

FACE protects protesters' First Amendment right to free speech. Clinic protesters remain free to conduct peaceful protests, including singing hymns, praying, carrying signs, walking picket lines and distributing anti-abortion materials outside of clinics.

Is shouting outside of a clinic a FACE violation?

FACE allows shouting outside of clinics, as long as no threats are made. However, noise levels may not exceed those set by state or local law.

Is the use of photography or videotaping outside a clinic prohibited under FACE?

Taking somebody's picture, either still or moving, without their consent is not an act of force or a threat of force, therefore this is not a FACE violation. However, it could be actionable under state law.

Who can bring a criminal cause of action under FACE?

Only the federal government can file criminal charges under FACE.

What are the criminal penalties under FACE?

The criminal penalties vary according to the severity of the offense and the defendant's prior record of FACE violations. The Act does not provide for minimum sentences; the following are illustrative of the maximum sentences:

- Generally, a first-time offender cannot be sentenced to more than 1 year in prison and a \$100,000 fine. For a second or subsequent violation after a prior FACE conviction, a defendant may be imprisoned for no more than 3 years and fined \$250,000.
- If the violation is a non-violent physical obstruction, a first time "blockader" faces no more than 6 months in prison and a \$10,000 fine. For subsequent violations, the maximum penalty is 18 months and a \$25,000 fine.
- The maximum sentence for offenses that result in bodily injury is 10 years imprisonment. In an offense that results in death, the maximum penalty is life imprisonment.

Who can bring a civil cause of action under FACE?

The federal government, state governments, and/or any person or facility that has been the victim of a prohibited action under FACE can bring a civil lawsuit against a violator of FACE.

What are the civil penalties under FACE?

A private plaintiff can obtain temporary, preliminary, or permanent injunctive relief, compensatory and punitive damages, and fees for attorneys and expert witnesses. Rather than collecting compensatory damages, the plaintiff may choose to recover \$5,000 for each proven violation.

The federal government or attorney general of a state may also bring a civil suit in federal court on behalf of third parties injured by FACE violations. The court may impose civil fines on the defendants according to the following maximum fines:

- first offense, nonviolent physical obstruction: \$10,000;
- other first offenses: \$15,000;
- subsequent offenses for nonviolent physical obstruction: \$15,000;
- other subsequent offenses: \$25,000.

Does FACE create a Federal standard “buffer zone” that protesters cannot enter?

No, FACE does not include a “buffer zone,” which is a zone that regulates certain types of expressive activity within a designated distance from the entrance of a health care facility. However, the Act does provide for injunctive relief in the event of a FACE violation, which could limit the areas in which protests occur. In other words, to obtain a protest-free buffer zone around a clinic entrance, either the facility or the state or federal government must file a civil lawsuit against individual protesters and/or their sponsoring organizations, and prove that their actions violate FACE.

Is FACE constitutional?

Yes, each of the eight federal appeals courts that has heard a FACE case held that FACE is constitutional.^{vi} The U.S. Supreme Court has chosen not to review these cases, in essence affirming the Act's constitutionality. FACE does not infringe on the free speech and free assembly rights of anti-

abortion protesters. Rather, the law covers unprotected conduct, such as threats, assault, trespass and vandalism.

Has the passage and enforcement of FACE assisted in the decrease of clinic violence?

Yes. In 1994, 52% of clinics reported experiencing severe violence (classified as blockades, invasions, bombings, arsons, chemical attacks, stalking, physical violence, gunfire, bomb threats, death threats, and murder). That number declined to 20% in 1999 and 2000.^{vii} However, since the murder of Dr. Tiller in Wichita, KS in 2009, there has been an uptick of extreme violence directed at clinics and providers. In a 2010 survey, 23.5% of abortion providers reported experiencing extreme violence.^{viii} The general consensus is that the FACE Act is an important tool in responding to clinic violence and in deterring possible offenders.

What is the status of law enforcement response to clinic incidents?

Since the passage of the FACE Act, incidents of extreme violence against reproductive health care providers have significantly diminished, but remain persistent. From 1994 to 2013, the Department of Justice (DOJ) obtained convictions of 89 individuals in 66 criminal prosecutions for violations of FACE. Also, DOJ has brought 27 civil lawsuits under FACE, which have resulted in injunctive relief, damages, and/or penalties.^{ix} Following the murder of Dr. Slepian in 1998, then U.S. Attorney General Janet Reno established the Department of Justice's National Task Force on Violence Against Health Care Providers to address violence against reproductive health care providers and their patients. The task force is responsible for coordinating criminal investigations of anti-abortion criminal activities on a national level. They work with federal, state and local law enforcement agencies to address safety and security issues and to provide investigative support.

What are other legal devices that can be utilized by reproductive health care providers?

Although FACE is extremely useful, there are other tools available. Other federal statutes that may apply:

- Threats (18 U.S.C. § 875 and § 876; 18 U.S.C. § 844).
Criminalizes any threat to kidnap or injure a person that is sent through the mail or by interstate telephone lines. The threat need not be made directly to the intended victim. Although a telephone threat must be made between two states for it to be a federal crime, many states have parallel statewide provisions. Additionally, any threat by telephone or mail that involves the use of explosives to injure a person or destroy property is a federal crime, regardless of the originating point of the threat.
- Telephone Harassment (18 U.S.C. § 223).
Criminalizes any interstate telephone call that is made for the purpose of harassment. This includes calls where no conversation ensues.
- Extortion (18 U.S.C. § 1951).
Criminalizes threats of violence used to force someone to relinquish property. Thus, a threat to commit an act of violence against a physician or clinic if either continues to provide abortions is a crime. The statute probably does not protect recipients of health care services who are similarly threatened.
- Stalking (18 U.S.C.A. § 2261A).
Criminalizes repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear.

For information on state laws that protect reproductive health care providers, see National Abortion Federation publication *Legal Remedies to Address Clinic Violence and Harassment: A Handbook for NAF Members*, available at:
http://www.prochoice.org/pubs_research/publication_s/downloads/Legal_Remedies.pdf.

References

- i 18 U.S.C.A § 248(a).
- ii *Raney v. Aware Woman Center for Choice, Inc.*, 224 F.3d 1266 (11th Cir. 2000).
- iii The Supreme Court denied an appeal in *Planned Parenthood v. ACLA*.
- iv *U.S. v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996).
- v *U.S. v. Hart*, 212 F.3d 1067 (8th Cir. 2000).
- vi *Norton v. Ashcroft*, 298 F.3d 547 (6th Cir. 2002); *U.S. v. Hart*, 212 F.3d 1067 (8th Cir. 2000); *U.S. v. Gregg*, 226 F.3d 253 (3rd Cir. 2000); *U.S. v. Wilson*, 154 F.3d 658 (7th Cir. 1998); *U.S. v. Weslin*, 156 F.3d 292 (2d Cir. 1998); *Hoffman v. Hunt*, 126 F.3d 575 (4th Cir. 1997); *Cheffer v. Reno*, 55 F.3d 1517 (11th Cir. 1996); *Terry v. Reno*, 101 F.3d 1412 (D.C. Cir. 1996).
- vii 2000 National Clinic Violence Report, Feminist Majority Foundation.
- viii 2010 National Clinic Violence Report, Feminist Majority Foundation.
- ix National Task Force on Violence Against Health Care Providers, Department of Justice, Report on Federal Efforts to Prevent and Prosecute Clinic Violence 1998-2000.

Copyright 2014 National Abortion Federation.

National Abortion Federation
1660 L Street NW, Suite 450
Washington, DC 20036
202-667-5881
www.prochoice.org