

No. 16-15360

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIONAL ABORTION FEDERATION, NAF,
Plaintiff-Appellee,

v.

CENTER FOR MEDICAL PROGRESS; BIOMAX PROCUREMENT SERVICES, LLC; DAVID
DALEIDEN, AKA ROBERT DAOUD SARKIS; TROY NEWMAN,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California, No. 15-cv-03522
(Hon. William Horsley Orrick III, J.)

**BRIEF FOR AMICI CURIAE
PLANNED PARENTHOOD FEDERATION OF AMERICA AND
PLANNED PARENTHOOD AFFILIATES OF CALIFORNIA IN SUPPORT
OF PLAINTIFF-APPELLEE AND AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c)(1), Planned Parenthood Federation of America and Planned Parenthood Affiliates of California state that they have no parent corporation and that there is no publicly held corporation that owns 10 percent or more of their stock.

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---	----

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OTHER AUTHORITIES

California Planned Parenthood Education Fund, <i>California Planned Parenthood Health Centers</i> , available at http://www.cppef.org/about-us/ (last visited June 7, 2016)	4, 5
California Planned Parenthood Education Fund, <i>Planned Parenthood Services</i> , http://www.cppef.org/web/wp-content/uploads/2011/08/CPPEF-InfoGraphic-Revised.pdf (last visited June 7, 2016).....	5
Cavaliere, Victoria, <i>Fire at Washington State Planned Parenthood Ruled Arson</i> , Reuters, Sept. 5, 2015, http://www.reuters.com/article/us-usa-washington-arson-idUSKCN0R504Q20150905	16
Center for Medical Progress, Press Release, <i>Second Planned Parenthood Senior Executive Haggles Over Baby Parts Prices, Changes Abortion Methods</i> , July 21, 2015, http://www.centerformedicalprogress.org/2015/07/second-planned-parenthood-senior-executive-haggles-over-baby-parts-prices-changes-abortion-methods/	9
Charo, R. Alta, <i>Fetal Tissue Fallout</i> , 373 New Eng. J. Med. 890 (2015), available at http://www.nejm.org/doi/pdf/10.1056/NEJMp1510279	7

Curry, Bill, *Against Abortion: Clinic Fires a Holy War, Bomber Says*,
 L.A. Times, Jan. 11, 1985, http://articles.latimes.com/1985-01-11/news/mn-8304_1_abortion-clinics12

Editorial Board, *It's Time To Shut Down the Special Panel on Fetal Tissue Research*, Wash. Post, May 27, 2016, https://www.washingtonpost.com/opinions/case-closed-its-time-to-shut-down-the-special-panel-on-fetal-tissue-research/2016/05/27/67df20a6-21e8-11e6-aa84-42391ba52c91_story.html7

Editorial Board, *The State Assault on Planned Parenthood*, N.Y. Times, Mar. 28, 2016, <http://www.nytimes.com/2016/03/28/opinion/the-state-assault-on-planned-parenthood.html>8

Feminist Majority Foundation, *1993 Clinic Violence Survey Report*, <http://www.feminist.org/research/cvsurveys/93nation.html> (last visited June 7, 2016)13

Feminist Majority Foundation, *1994 Clinic Violence Survey Report: Appendix B*, http://www.feminist.org/research/cvsurveys/cv_appB.html (last visited June 7, 2016).....13

Feminist Majority Foundation, *1995 Clinic Violence Survey Report: Appendix B*, <http://www.feminist.org/research/cvsurveys/cvsurvey14.html> (last visited June 7, 2016)13

Feminist Majority Foundation, *1996 Clinic Violence Survey Report: Appendix B*, <http://www.feminist.org/research/cvsurveys/1996/cvsurvey14.html> (last visited June 7, 2016)13

Feminist Majority Foundation, *1997 Clinic Violence Survey Report: Appendix 2 (1998)*, <http://www.feminist.org/research/cvsurveys/1997/cvsurvey15.html>.....13

Feminist Majority Foundation, *1998 National Clinic Violence Survey Report: Appendix 2 (1999)*, <http://www.feminist.org/research/cvsurveys/1998/finaldraft.html>13

Feminist Majority Foundation, *1999 National Clinic Violence Survey Report: Appendix B (2000)*, <http://www.feminist.org/research/cvsurveys/1999/1999ClinicSurvey.htm>.....13

Feminist Majority Foundation, *2000 National Clinic Violence Survey Report: Appendix B* (2001), http://www.feminist.org/research/cvsurveys/clinic_survey2000.pdf14

Feminist Majority Foundation, *2014 National Clinic Violence Survey* (2015), <http://www.feminist.org/rrights/pdf/2015NCAPsurvey.pdf> 14

Freishtat, Sarah, *FBI Investigating Fire Outside Aurora Planned Parenthood Facility*, Chi. Trib., July 29, 2015, <http://www.chicagotribune.com/suburbs/aurora-beacon-news/news/ct-abn-planned-parenthood-fire-st-0730-20150729-story.html>..... 16

Fusion GPS, *Analysis of Center for Medical Progress Videos* (Aug. 25, 2015), available at <https://istandwithpp.org/files/9414/4068/4146/8-27-15-Analysis-Center-for-Medical-Progress-Videos-Forensic-Report.pdf> 8, 9

Grillot, Chris, *NOFD Investigating Car Fire At Planned Parenthood Construction Site*, Times-Picayune, Aug. 3, 2015, http://www.nola.com/crime/index.ssf/2015/08/authorities_investigating_car.html..... 16

Guttmacher Institute, *Publicly Funded Family Planning Services in the United States* (2016), available at https://www.guttmacher.org/sites/default/files/factsheet/fb_contraceptive_serv_0.pdf4

Hutcherson, Kimberly, *A Brief History of Anti-Abortion Violence*, CNN, Dec. 1, 2015, <http://www.cnn.com/2015/11/30/us/anti-abortion-violence/> 11

Kaplan, Sarah, *'I'm a Warrior for the Babies' Planned Parenthood Suspect Declares in Court*, Wash. Post, Dec. 10, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/12/10/im-a-warrior-for-the-babies-planned-parenthood-suspect-declares-in-court/> 17

Khurshid, Samar, *Lawmakers Knew About Planned Parenthood Video Weeks Ago*, Roll Call, July 16, 2015, available at <http://www.rollcall.com/news/home/interview-didnt-happen>.....9

Kurtzleben, Danielle, *Planned Parenthood Investigations Find No Fetal Tissue Sales*, NPR, Jan. 28, 2016, <http://www.npr.org/2016/01/28/464594826/in-wake-of-videos-planned-parenthood-investigations-find-no-fetal-tissue-sales>7

Letter from Cecile Richards, President of Planned Parenthood Federation of America, to Congressional Leadership (Aug. 27, 2015), *available at* <http://ppfa.pr-optout.com/ViewAttachment.aspx?EID=mr9WXYw4u2IxYnni1dBRVmMQR51KNkcLKWgR2hTdC2Y%3d>6, 7

Liss-Schultz, Nina, *The New, Ugly Surge in Violence and Threats Against Abortion Providers*, Mother Jones, Nov. 28, 2015, <http://www.motherjones.com/politics/2015/11/violence-abortion-clinics-planned-parenthood-colorado-springs-shooting> 14, 16

Meet the Man Who Exposed Planned Parenthood, Fox Nation, July 23, 2015, <http://nation.foxnews.com/2015/07/23/meet-man-who-exposed-planned-parenthood>8

National Abortion Federation, *2015 Violence and Disruption Statistics* (Apr. 2016), *available at* <http://5aa1b2xfmfh2e2mk03kk8rsx.wpengine.netdna-cdn.com/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf>..... 12, 15, 16

National Abortion Federation, *Continuing Medical Education*, <http://prochoice.org/health-care-professionals/continuing-medical-education/> (last visited June 7, 2016)19

National Abortion Federation, *Violence Statistics and History*, <http://prochoice.org/education-and-advocacy/violence/violence-statistics-and-history/> (last visited June 7, 2016)12

Planned Parenthood Federation of America, *Services* (2016), *available at* https://www.plannedparenthood.org/files/3814/5756/0903/PP_Services.pdf5, 6

Planned Parenthood Office in Claremont Heavily Damaged by Intruder, WMUR.com, Oct. 22, 2015, <http://www.wmur.com/news/planned-parenthood-office-in-claremont-heavily-damaged-by-intruder/35963182>16

Planned Parenthood, *By the Numbers* (2016), available at https://www.plannedparenthood.org/files/5414/5678/8221/PP_Numbers.pdf4

Planned Parenthood, *This Is Who We Are: Serving the African-American Community* (2016), available at https://www.plannedparenthood.org/files/7114/5678/8343/WhoWeAre_AfAm.pdf.....5

Planned Parenthood, *This Is Who We Are: Serving the Latino Community* (2016), available at https://www.plannedparenthood.org/files/1614/5678/8319/WhoWeAre_Lat.pdf5

Sheppard, Nathaniel, Jr., *Doctor’s Abduction Stuns Steel Town*, N.Y. Times, Aug. 23, 1982, <http://www.nytimes.com/1982/08/23/us/doctor-s-abduction-stuns-steel-town.html> 12

Stack, Liam, *A Brief History of Deadly Attacks on Abortion Providers*, N.Y. Times, Nov. 29, 2015, http://www.nytimes.com/interactive/2015/11/29/us/30abortion-clinic-violence.html?_r=0 12, 13

Topulos, George, et al., Editorial, *Planned Parenthood at Risk*, 373 New Eng. J. Med. 963 (2015), available at <http://www.nejm.org/doi/pdf/10.1056/NEJMe1510281>7

Turkewitz, Julie & Jack Healy, *3 Are Dead in Colorado Springs Shootout at Planned Parenthood Center*, N.Y. Times, Nov. 27, 2015, <http://www.nytimes.com/2015/11/28/us/colorado-planned-parenthood-shooting.html?version=meter+at+1&module=meter-Links&pgtype=article&contentId=&mediaId=&referrer=https%3A%2F%2Fwww.google.com%2F&priority=true&action=click&contentCollection=meter-links-click> 17

STATEMENT OF AMICI'S IDENTITY AND INTEREST¹

Amicus Planned Parenthood Federation of America (“PPFA”) is the oldest and largest provider of reproductive health care in the United States, delivering medical services through approximately 650 health centers operated by 58 affiliates. Its mission is to provide comprehensive reproductive health care services and education, to provide educational programs relating to reproductive and sexual health, and to advocate for public policies to ensure access to health services. One out of every five women in the United States has received care from Planned Parenthood. PPFA and its affiliates have an interest in ensuring the continued availability of comprehensive reproductive health services, including abortion, throughout the United States.

Amicus Planned Parenthood Affiliates of California (“PPAC”) is a not-for-profit organization that leads the state-wide public policy and advocacy work on behalf of the seven separately incorporated Planned Parenthood affiliates in California. Collectively, the California Planned Parenthood affiliates operate 115 health centers, handling almost 1.5 million patient visits each year. They offer the

¹ Pursuant to Federal Rule of Appellate Procedure 29(a), all parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(c)(5), no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money that was intended to fund the preparation or submission of this brief, and no person—other than amici curiae, their members, or their counsel—contributed money that was intended to fund the preparation or submission of this brief.

full range of reproductive health care, and often primary care, services.

Approximately 87 percent of their patients have incomes at or below 200 percent of the federal poverty level. PPAC's mission is to create a personally and politically safe climate in which individuals have universal and unfettered access to sexual and reproductive health services and are free to follow their own beliefs, values, and moral code when making decisions about these services. PPFA, PPAC, and their member-affiliates are referred to alternately and collectively in this brief as "Planned Parenthood."

As explained below, defendants-appellants used the conferences sponsored by the National Abortion Federation ("NAF") that are at issue in this appeal to develop relationships with Planned Parenthood staff to further their scheme, which targeted Planned Parenthood in particular. As defendants-appellants likely knew, Planned Parenthood staff regularly attend NAF conferences both to learn from and to share their own knowledge with other abortion providers. Amici are, therefore, interested in keeping NAF conferences a safe space at which they can share ideas and learning so that they can continue to provide the high-quality health care that they are known for providing.

INTRODUCTION

In July 2015, defendant-appellant Center for Medical Progress and its co-conspirators (collectively, "CMP") launched a well-orchestrated campaign to

discredit Planned Parenthood and end safe, legal abortion in America. Over a several month period, approximately once a week, they broadly released fraudulently obtained, misleading, heavily manipulated videotapes, which included making these videos publicly available on the Internet. Immediately, there was a dramatic spike in threatened and actual violence at Planned Parenthood health centers and against Planned Parenthood staff, culminating in a multiple fatality shooting in Colorado.

In addition to potentially inciting more violence, release of additional videos would discourage providers from participating in the types of candid, technical medical discussions necessary for continuing medical education for fear that they could be the victim of yet another fraudulent scheme by anti-abortion extremists or, worse, a victim of violence. Chilling these discussions impedes providers' ability to stay abreast of the latest practice advancements and medical research, which, in turn, has a negative impact on the provision of evidence-based, quality reproductive health care to women.

Amici, as leading providers of abortion in the United States, experienced first-hand the harm that the release of CMP's videos has caused, and write here to share that experience with the Court.

BACKGROUND

For almost 100 years, Planned Parenthood has played a critical role in the provision of health care for women in the United States. Planned Parenthood consists, on the national level, of over 50 local affiliates who operate approximately 650 health centers.² In California alone, Planned Parenthood's seven affiliate organizations operate 115 health centers.³ Approximately 2.5 million individuals in the United States are served by Planned Parenthood affiliates each year and millions more access Planned Parenthood's resources via its website or overseas.⁴

Planned Parenthood's extensive health care activities reach historically underserved populations: Nationwide, 75 percent of Planned Parenthood's patients have incomes at or below 150 percent of the federal poverty level;⁵ in California, 87 percent of its patients have incomes at or below 200 percent of the federal

² Planned Parenthood, *By the Numbers* (2016), available at https://www.plannedparenthood.org/files/5414/5678/8221/PP_Numbers.pdf ("*By the Numbers*").

³ California Planned Parenthood Education Fund ("CPPEF"), *California Planned Parenthood Health Centers*, <http://www.cppef.org/about-us/> (last visited June 7, 2016).

⁴ *By the Numbers*.

⁵ *Id.*; see also Guttmacher Inst., *Publicly Funded Family Planning Services in the United States 2-3* (2016), available at https://www.guttmacher.org/sites/default/files/factsheet/fb_contraceptive_serv_0.pdf (providing percentages of women treated at Planned Parenthood facilities).

poverty level.⁶ For the low-income patients who access care through Planned Parenthood, that is often the only health care they are able to receive. Overall, 15 percent of Planned Parenthood patients are African-American⁷ and 23 percent of its patients are Latino.⁸ Further, Planned Parenthood's health centers are often located in areas where there are little to no other health care services.

Planned Parenthood affiliates provide a wide range of reproductive health and other preventative health services. For example, in 2014, they provided over four million tests and treatments for sexually transmitted illnesses, nearly three million contraceptive services, and over 600,000 cancer screenings and preventative treatments.⁹ In 2013 in California, Planned Parenthood provided approximately 1.4 million tests and treatments for sexually transmitted illnesses, provided contraception to nearly 700,000 patients, and conducted approximately

⁶ CPPEF, *supra* note 3.

⁷ Planned Parenthood, *This Is Who We Are: Serving the African-American Community* (2016), available at https://www.plannedparenthood.org/files/7114/5678/8343/WhoWeAre_AfAm.pdf (citing 2014 data).

⁸ Planned Parenthood, *This Is Who We Are: Serving the Latino Community* (2016), available at https://www.plannedparenthood.org/files/1614/5678/8319/WhoWeAre_Lat.pdf (citing 2014 data).

⁹ Planned Parenthood Federation of America, *Services 2* (2016), available at https://www.plannedparenthood.org/files/3814/5756/0903/PP_Services.pdf (“*Services*”).

78,000 cervical cancer screenings and 82,000 breast exams.¹⁰ Some Planned Parenthood affiliates provide primary health care services for families, as well.¹¹ Because Planned Parenthood offers comprehensive health care, patients benefit from being able to see a provider, get tested, and obtain medication without having to spend additional time and resources to travel to a lab or pharmacy.

In addition to their provision of health care, a small number of Planned Parenthood affiliates, as permitted by applicable federal and state laws, have offered women who obtain abortions at their facilities the option of donating fetal tissue for medical research.¹² Research using fetal tissue has been critical to important developments in the medical field. According to recent commentary in the *New England Journal of Medicine*:

Virtually every person in this country has benefited from research using fetal tissue. Every child who's been spared the risks and misery of chickenpox, rubella, or polio can thank the Nobel Prize recipients and other scientists who used such tissue in research yielding the vaccines that protect us (and give even the unvaccinated the benefit of

¹⁰ CPPEF, *Planned Parenthood Services*, <http://www.cppef.org/web/wp-content/uploads/2011/08/CPPEF-InfoGraphic-Revised.pdf> (last visited June 7, 2016) (citing 2013 data regarding California).

¹¹ *Services*, at 3 n.4.

¹² See Letter from Cecile Richards, President of Planned Parenthood Federation of America, to Congressional Leadership (Aug. 27, 2015), *available at* <http://ppfa.pr-optout.com/ViewAttachment.aspx?EID=mr9WXYw4u2IxYnni1dBRVmMQR51KNkcLKWgR2hTdC2Y%3d>.

herd immunity). This work has been going on for nearly a century, and the vaccines it produced have been in use nearly as long.¹³

Research using fetal tissue, which has become “the gold standard for some disease research” because of its cells’ ability to “rapidly divide, grow, and adapt to new environments,” has also sought to combat end-stage breast cancer, diabetes, and Parkinson’s disease, among other diseases.¹⁴ Although only one percent of Planned Parenthood’s health care centers are involved in fetal tissue donation for medical research, the organization is proud of its role in fetal tissue research, which is lawful and consistent with the legislative goals of the federal laws that govern it.¹⁵ Notably, after a careful review of the record before it, the district court found no evidence of wrongdoing by Planned Parenthood with regard to fetal tissue donation.¹⁶

¹³ R. Alta Charo, *Fetal Tissue Fallout*, 373 *New Eng. J. Med.* 890, 890 (2015), available at <http://www.nejm.org/doi/pdf/10.1056/NEJMp1510279>.

¹⁴ *Id.* at 891.

¹⁵ Letter from Cecile Richards, *supra* note 12; see also George P. Topulos et al., Editorial, *Planned Parenthood at Risk*, 373 *New Eng. J. Med.* 963, 963 (2015), available at <http://www.nejm.org/doi/pdf/10.1056/NEJMe1510281>.

¹⁶ Dist. Ct. Op. 13, 30, 34 (ECF No. 354). The district court’s conclusion is the same as that reached by officials in twelve states who investigated Planned Parenthood affiliates’ actions with respect to fetal tissue donation, with each and every one finding no wrongdoing with respect to the selling of fetal tissue. Danielle Kurtzleben, *Planned Parenthood Investigations Find No Fetal Tissue Sales*, NPR, Jan. 28, 2016, <http://www.npr.org/2016/01/28/464594826/in-wake-of-videos-planned-parenthood-investigations-find-no-fetal-tissue-sales>; see also Editorial Bd., *It’s Time To Shut Down the Special Panel on Fetal Tissue Research*, Wash. Post, May 27, 2016, [- 7 -](https://www.washingtonpost.com/opinions/case-</p></div><div data-bbox=)

Planned Parenthood's very limited, legal, and ethical fetal tissue donation activity is the subject of CMP's irresponsible videos. To create the videos, CMP fraudulently gained access to Planned Parenthood staff at conferences (including two NAF conferences) as well as at two Planned Parenthood health centers by creating a fake company, BioMax Procurement Services, LLC ("BioMax"), with a fake purpose (to obtain fetal tissue for medical research) and fake employees. Once they gained access to the abortion providers, CMP recorded their conversations without the providers' knowledge.¹⁷

Not only were the videos of these conversations fraudulently and illegally obtained, but they were then substantially edited to distort the statements of the abortion providers whom CMP targeted.¹⁸ A video forensics analysis revealed the

closed-its-time-to-shut-down-the-special-panel-on-fetal-tissue-research/2016/05/27/67df20a6-21e8-11e6-aa84-42391ba52c91_story.html; Editorial Bd., *The State Assault on Planned Parenthood*, N.Y. Times, Mar. 28, 2016, <http://www.nytimes.com/2016/03/28/opinion/the-state-assault-on-planned-parenthood.html>.

¹⁷ Approximately 500 hours of videotapes, obtained at two NAF conferences, are discussed in the district court opinion. Dist. Ct. Op. 8. CMP's founder has admitted to having recorded thousands of hours' worth of conversations over several years. *Meet the Man Who Exposed Planned Parenthood*, Fox Nation, July 23, 2015, <http://nation.foxnews.com/2015/07/23/meet-man-who-exposed-planned-parenthood>.

¹⁸ Fusion GPS, *Analysis of Center for Medical Progress Videos 2* (Aug. 25, 2015), available at <https://istandwithpp.org/files/9414/4068/4146/8-27-15-Analysis-Center-for-Medical-Progress-Videos-Forensic-Report.pdf> ("[The analysts'] review did conclude that CMP edited content out of the alleged 'full footage' videos, and

depth to which the videos were doctored: “[T]he manipulation of the videos does mean they have no evidentiary value in a legal context and cannot be relied upon for any official inquiries unless supplemented by CMP’s original material and forensic authentication that this material is supplied in unaltered form. The videos also lack credibility as journalistic products.”¹⁹

Nevertheless, CMP for months released heavily edited and manipulated videos to the public, posting them on multiple websites, making them available on YouTube, and disseminating them widely to the press and sympathetic politicians.²⁰ The released videos featured PPFA and Planned Parenthood affiliate staff. At least four videos featured California-based Planned Parenthood physicians and two were taken from visits to Planned Parenthood health centers in Texas and Colorado. Following the release of these videos, the individuals featured were targeted mercilessly across the Internet, including repeated calls for

heavily edited the short videos so as to misrepresent statements made by Planned Parenthood representatives.”).

¹⁹ *Id.*

²⁰ *See, e.g.*, Center for Medical Progress, Press Release, *Second Planned Parenthood Senior Executive Haggles Over Baby Parts Prices, Changes Abortion Methods*, July 21, 2015, <http://www.centerformedicalprogress.org/2015/07/second-planned-parenthood-senior-executive-haggles-over-baby-parts-prices-changes-abortion-methods/> (CMP press release; corresponding video posted on CMP website and YouTube); Samar Khurshid, *Lawmakers Knew About Planned Parenthood Video Weeks Ago*, Roll Call, July 16, 2015, <http://www.rollcall.com/news/home/interview-didnt-happen>.

their death,²¹ and, as described below, violence at Planned Parenthood health centers increased substantially.

ARGUMENT

The release of the fraudulently obtained and recklessly manipulated videotapes has caused enormous harm to Planned Parenthood, its staff, and its patients, and has threatened to jeopardize Planned Parenthood's ability to offer reproductive health care services to millions of predominantly low-income women, men, and teens in the United States. In the weeks and months following the release of the videos, harassment and violence against Planned Parenthood health centers, physicians, and staff increased dramatically, causing Planned Parenthood to have to expend significant resources on additional security. Planned Parenthood clinicians and staff—who already are subject to heightened rates of violence compared to other medical providers—should not have to further risk their safety due to these highly misleading and fraudulently obtained videos. Nor should they have to fear attending educational meetings and conferences where they can obtain and share continuing medical education to benefit patients.

Moreover, medical providers who were not targeted in the already-released videos but who likely came into contact with CMP at industry conferences suspect that they too were secretly taped and their comments would be released in a highly

²¹ See, e.g., Appellee's Br. 17-19.

edited and distorted fashion if CMP were allowed to proceed with releasing their store of tapes.²² And, as described below, the violence and threats following the prior release of tapes were not limited to those providers who were targeted, but rather affected a broad range of health centers and providers. If the district court's injunction is overturned, the number of individuals and centers impacted by the videos is certain to increase, and the chilling effect on providers' ability to congregate to share medical information to improve the quality of care will be magnified.

I. THE CMP VIDEOS JEOPARDIZE THE SAFETY OF PLANNED PARENTHOOD'S MEDICAL PROVIDERS AND STAFF

A. There is a long, well-documented history of violence against abortion providers and clinics.

The history of violence against abortion providers and abortion clinics is well documented. Medical providers and staff who support women's health care by performing abortions do so often at risk to their physical safety and the safety of their families.

Shortly after the Supreme Court's 1973 decision in *Roe v. Wade*, 410 U.S. 113 (1973), the first abortion clinic arson was reported in 1976, followed by a series of clinic bombings in 1978.²³ In 1982, an abortion provider and his wife

²² Dist. Ct. Op. 18.

²³ Kimberly Hutcherson, *A Brief History of Anti-Abortion Violence*, CNN, Dec. 1, 2015, <http://www.cnn.com/2015/11/30/us/anti-abortion-violence/>.

were kidnapped.²⁴ Three abortion clinics were bombed that same year, followed by more than 24 cases of bombings and arsons two years later.²⁵ These events were only the beginning of what has developed into a pattern of violence against medical providers and clinics perpetuated by anti-abortion extremists.

Not only have arsons and bombings continued, but anti-abortion extremists have used chemicals, such as butyric acid, to vandalize clinics and have sent letters threatening to include anthrax to scare medical professionals and clinic staff.²⁶ Even worse, in the early 1990s, anti-abortion extremists began murdering staff and medical professionals working at abortion clinics. The first abortion provider was murdered in 1993; altogether, there have been 11 murders and 26 attempted murders attributable to anti-abortion violence.²⁷ Targeting of abortion providers'

²⁴ Nathaniel Sheppard, Jr., *Doctor's Abduction Stuns Steel Town*, N.Y. Times, Aug. 23, 1982, <http://www.nytimes.com/1982/08/23/us/doctor-s-abduction-stuns-steel-town.html>.

²⁵ Bill Curry, *Against Abortion: Clinic Fires a Holy War, Bomber Says*, L.A. Times, Jan. 11, 1985, http://articles.latimes.com/1985-01-11/news/mn-8304_1_abortion-clinics.

²⁶ National Abortion Federation, *Violence Statistics and History*, <http://prochoice.org/education-and-advocacy/violence/violence-statistics-and-history/> (last visited June 6, 2016).

²⁷ Liam Stack, *A Brief History of Deadly Attacks on Abortion Providers*, N.Y. Times, Nov. 29, 2015, http://www.nytimes.com/interactive/2015/11/29/us/30-abortion-clinic-violence.html?_r=0; National Abortion Federation, *2015 Violence and Disruption Statistics* (Apr. 2016), available at <http://5aa1b2xfmfh2e2mk03kk8rsx.wpengine.netdna-cdn.com/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf> ("NAF 2015 Statistics").

families and communities is also a common tactic of those who engage in anti-abortion violence. Indeed, some of the murders occurred in medical providers' homes, and at least one occurred in a provider's church.²⁸

Historically, California has been one of the states that has experienced the most anti-abortion violence.²⁹ In California alone, in the last five years, there were

²⁸ Stack, *supra* note 27.

²⁹ See, e.g., Feminist Majority Foundation, *1993 Clinic Violence Survey Report*, <http://www.feminist.org/research/cvsurveys/93nation.html> (last visited June 7, 2016) (“Clinics and health care workers in California, Texas, Michigan, Florida, Montana, New York, Massachusetts and Illinois were among those that faced the most acute violence.”); Feminist Majority Foundation, *1994 Clinic Violence Survey Report: Appendix B*, http://www.feminist.org/research/cvsurveys/cv_appB.html (last visited June 7, 2016) (including California on its list of “12 States Experiencing Highest Levels of Anti-abortion Violence”); Feminist Majority Foundation, *1995 Clinic Violence Survey Report: Appendix B*, <http://www.feminist.org/research/cvsurveys/cvsurvey14.html> (last visited June 7, 2016) (including California on its list of “Twelve States With Highest Levels of Anti-abortion Violence During the First Seven Months of 1995”); Feminist Majority Foundation, *1996 Clinic Violence Survey Report: Appendix B*, <http://www.feminist.org/research/cvsurveys/1996/cvsurvey14.html> (last visited June 7, 2016) (including California on its list of “Twelve States With the Highest Levels of Anti-Abortion Violence During the First Seven Months of 199[6]”); Feminist Majority Foundation, *1997 Clinic Violence Survey Report: Appendix 2* (1998), <http://www.feminist.org/research/cvsurveys/1997/cvsurvey15.html> (including California on its list of “Thirteen States With Highest Levels of Anti-Abortion Violence During the First Seven Months of 1997”); Feminist Majority Foundation, *1998 National Clinic Violence Survey Report: Appendix 2* (1999), <http://www.feminist.org/research/cvsurveys/1998/finaldraft.html> (including California on its list of “Twelve States With Highest Levels of Anti-Abortion Violence During the First Seven Months of 1998”); Feminist Majority Foundation, *1999 National Clinic Violence Survey Report: Appendix B* (2000), <http://www.feminist.org/research/cvsurveys/1999/1999ClinicSurvey.htm> (including California as one of ten states on its list of “Highest Reported Levels of

442 security incidents at health centers reported, including 11 bomb threats and 37 reports of vandalism.³⁰

In recent years, harassment and intimidation of women's health providers has increased. A nationwide survey of women's health clinics found that in 2014, clinics reported higher levels of targeted intimidation of clinic staff, as well as an increasing number of clinics impacted by these tactics.³¹ However, there had been no murders of abortion providers since 2009, before last fall's fatal shooting in Colorado.³² Other types of severe violence against abortion providers had similarly declined in recent years,³³ until CMP's release of the videos last year.

Anti-Abortion Violence"); Feminist Majority Foundation, *2000 National Clinic Violence Survey Report: Appendix B* (2001), http://www.feminist.org/research/cvsurveys/clinic_survey2000.pdf (including California on its list of "Seven States Reporting the Highest Levels of Anti-Abortion Violence, Harassment, and Intimidation").

³⁰ First Am. Compl., ¶ 49, *Planned Parenthood Fed'n of Am. v. Ctr. for Med. Progress*, No. 16-236, ECF No. 59 (N.D. Cal. Mar. 24, 2016).

³¹ Feminist Majority Foundation, *2014 National Clinic Violence Survey* (2015), <http://www.feminist.org/rrights/pdf/2015NCAPsurvey.pdf> ("FMF 2014 Survey").

³² Nina Liss-Schultz, *The New, Ugly Surge in Violence and Threats Against Abortion Providers*, Mother Jones, Nov. 28, 2015, <http://www.motherjones.com/politics/2015/11/violence-abortion-clinics-planned-parenthood-colorado-springs-shooting> (no murders between 2009 and release of videos).

³³ FMF 2014 Survey, Executive Summary & n.1 (defining "severe violence" as "blockades, clinic invasions, bombing, arson, chemical attacks, stalking, physical violence, gunfire, bomb threats, arson threats, and death threats" and comparing 2010 versus 2014 statistics).

B. Following the release of the CMP videos, there was a dramatic spike in violence and death threats toward abortion providers.

Violence and threats of violence against abortion clinics and providers increased by orders of magnitude in the months following CMP's release of the recklessly manipulated videos, beginning in July 2015. Nationally, there were 713 reports of incidents of harassment or violence directed at Planned Parenthood health centers in July and August 2015—the months immediately after CMP began releasing videos.³⁴ This is compared to only 188 over the same two-month period the year before. Nationwide, there were 94 death threats or threats of bodily harm in 2015, the year CMP released the videos, compared with only one the year before.³⁵

The increase in reports of incidents following the release of the videos is nothing short of staggering. Reported incidents of harassment at Planned Parenthood facilities, which had already increased in recent years, increased almost *nine fold* in July 2015—the month the first video was released—as compared to reports of incidents of harassment the month before. Reports of harassment continued to escalate in August. For example, clinics received threatening phone

³⁴ The figures cited in this and the following paragraph, unless otherwise noted, were compiled from monthly reports based on data submitted to PPFA by individual affiliates. Incidents reported as “protesters” have not been included.

³⁵ NAF 2015 Statistics.

calls, such as one voicemail left for a NAF member threatening that extremists would “pull a Columbine and wipe everyone out.”³⁶

Indeed, just days after CMP’s first video release there was an arson at a Planned Parenthood facility in Illinois, followed by another arson in Louisiana just two weeks later.³⁷ Later, there was an arson at a health center in Washington.³⁸

And, in New Hampshire, an intruder with a hatchet broke into a Planned Parenthood facility and destroyed medical equipment, phones, and computers.³⁹

Since 2009, there had been no murders related to anti-abortion activity;⁴⁰ however, in 2015 after the release of CMP’s videos, anti-abortion activist Robert Dear killed three people and wounded nine others in his shooting at a Colorado Springs

³⁶ NAF 2015 Statistics.

³⁷ See, e.g., Sarah Freishtat, *FBI Investigating Fire Outside Aurora Planned Parenthood Facility*, Chi. Trib., July 29, 2015, <http://www.chicagotribune.com/suburbs/aurora-beacon-news/news/ct-abn-planned-parenthood-fire-st-0730-20150729-story.html>; Chris Grillot, *NOFD Investigating Car Fire At Planned Parenthood Construction Site*, Times-Picayune, Aug. 3, 2015, http://www.nola.com/crime/index.ssf/2015/08/authorities_investigating_car.html.

³⁸ See, e.g., Victoria Cavaliere, *Fire at Washington State Planned Parenthood Ruled Arson*, Reuters, Sept. 5, 2015, <http://www.reuters.com/article/us-usa-washington-arson-idUSKCN0R504Q20150905>.

³⁹ See, e.g., *Planned Parenthood Office in Claremont Heavily Damaged by Intruder*, WMUR.com, Oct. 22, 2015, <http://www.wmur.com/news/planned-parenthood-office-in-claremont-heavily-damaged-by-intruder/35963182>.

⁴⁰ Liss-Schultz, *supra* note 32.

Planned Parenthood health center.⁴¹ Dear, who proclaimed himself a “warrior for the babies,” reportedly stated “[n]o more baby parts” when he was arrested in Colorado.⁴²

At California Planned Parenthood health centers, reports of violence also increased significantly following the release of CMP’s highly edited videos. Indeed, from July 2015 until the present, there have been 277 reports of violence, threats, or harassment, as compared to 41 over the same period in the prior year—approximately a seven-fold increase.⁴³ Given these figures, there can be little doubt that appellants’ conduct has contributed to a poisonous environment that has fueled these dangerous actions against and threats to Planned Parenthood health centers, patients, and staff.

Due to the increase in violence, Planned Parenthood had to substantially enhance its security measures to mitigate the risk of violence to clinics, medical

⁴¹ Julie Turkewitz & Jack Healy, *3 Are Dead in Colorado Springs Shootout at Planned Parenthood Center*, N.Y. Times, Nov. 27, 2015, <http://www.nytimes.com/2015/11/28/us/colorado-planned-parenthood-shooting.html?version=meter+at+1&module=meter-Links&pgtype=article&contentId=&mediaId=&referrer=https%3A%2F%2Fwww.google.com%2F&priority=true&action=click&contentCollection=meter-links-click>.

⁴² Sarah Kaplan, *‘I’m a Warrior for the Babies’ Planned Parenthood Suspect Declares in Court*, Wash. Post, Dec. 10, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/12/10/im-a-warrior-for-the-babies-planned-parenthood-suspect-declares-in-court/>.

⁴³ As with the above-cited statistics, *see supra* note 34, incidents reported as “protesters” are not included in these figures.

providers, and patients. For those physicians who appeared on the deceptively edited videos, Planned Parenthood had to provide around-the-clock security. In some instances, the providers had to move or go into hiding. These additional security measures come at a steep price, diverting resources that could be used for provision of additional health care services to women, including the more than 75 percent of Planned Parenthood clients nationally who are at or near the federal poverty level.

II. FURTHER RELEASE OF CMP VIDEOS THREATENS TO COMPROMISE THE WILLINGNESS OF THOSE ASSOCIATED WITH ABORTION PROVISION TO PARTICIPATE IN EDUCATIONAL EVENTS, INCLUDING CONTINUING MEDICAL EDUCATION, CHILLING IMPORTANT SPEECH

The CMP videos discourage health care providers from participating in important educational and training meetings, infringing their constitutionally protected right of association and chilling speech that is necessary for the provision of the best evidence-based reproductive health care. It is common practice for health care professionals to participate in seminars, conferences, and meetings to further their education and share knowledge in specialized areas of practice. Continuing medical education for abortion practitioners keeps them current on the latest research and ensures that they are providing the highest quality medical care. Many of Planned Parenthood's clinicians participate in continuing medical education conferences and seminars to further their education on women's

reproductive health issues and on abortion care specifically. They also routinely present at such conferences to share their expertise with others.

NAF is a leading provider for continuing medical education for abortion care and the only regular provider of abortion-specific accredited continuing medical education.⁴⁴ Many Planned Parenthood affiliates are members of NAF. NAF programs offer health care providers the ability to stay current with the latest research in the field and contribute to high-quality care.⁴⁵ In addition, NAF meetings also provide a safe space for abortion providers to discuss legal and policy issues related to abortion care.⁴⁶

The dates and locations of many NAF seminars and meetings are confidential. Attendance at these events is carefully restricted so that abortion clinicians and staff, who, as discussed above, practice under trying and sometimes violent conditions, can exchange information safely and freely. CMP compromised the security of these important and valued professional events when it used its fraudulently obtained access to develop relationships it leveraged to tape—secretly and without consent—its reckless videos. The Planned Parenthood clinicians who were portrayed in the videos have experienced substantial

⁴⁴ National Abortion Federation, *Continuing Medical Education*, <http://prochoice.org/health-care-professionals/continuing-medical-education/> (last visited June 7, 2016).

⁴⁵ *Id.*

⁴⁶ *Id.*

reputational and emotional harm, in addition to suffering from the increased violence and threats of violence described above, although they have not been found to have done anything wrong. These events have given other reproductive health care providers, including additional Planned Parenthood clinicians, grave concerns about participating in future medical conferences and educational meetings related to reproductive health care, for fear that they too could be the subject of misleading videos or the victim of other tactics by anti-abortion extremists.

Release of additional videos would compound these concerns. Those who attend medical education meetings, including Planned Parenthood staff, could be discouraged from attending such conferences altogether. This substantial chilling of safe, open, and free discussion in furtherance of providing quality medical care to women should not be permitted. Accordingly, appellants should continue to be enjoined from further releasing their misleading and fraudulently obtained videos.

CONCLUSION

For the foregoing reasons, amici ask that the Court affirm the district court's decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(a)(7)(B), the brief contains 4,289 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(a)(7)(B), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Sonya L. Lebsack
SONYA L. LEBSACK

June 7, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Sonya L. Lebsack

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