

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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UNITED STATES OF AMERICA,)	
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Plaintiff,)	Civil Action No. 11-CV-01430-PAB-MEH
)	
v.)	
)	
KENNETH SCOTT and JOANN SCOTT,)	
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)	
Defendants.)	
)	

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF THE
UNITED STATES OF AMERICA FOR PRELIMINARY INJUNCTIVE RELIEF**

The United States of America (the “United States”) brings this motion to enforce the Freedom of Access to Clinic Entrances Act of 1994 (“FACE”), 18 U.S.C. § 248. Kenneth Scott (“Defendant”),¹ by physical obstruction, has intentionally injured, intimidated, or interfered, or attempted to do the same, with persons who sought or provided reproductive health services at Planned Parenthood of the Rocky Mountains (“PPRM”, “the facility”, or “the clinic”), in Denver, Colorado. The United States has reasonable cause to believe that, absent timely intervention by this Court, the Defendant will continue to violate FACE. Because the Defendant’s actions cause irreparable harm to persons seeking to obtain or provide reproductive health services at PPRM, and violate the public interest as set forth by Congress through its

¹On April 5, 2011, Defendant JoAnn Scott was convicted in Denver County Court on one count of obstructing entry to a health care facility and two counts of harassment. On June 2, 2011, she was sentenced to jail for 90 days, 180 days suspended sentence, two years of probation, and 100 hours of community service. In addition, the original protection order requiring Defendant JoAnn Scott to stay 100 feet from the entrance door of PPRM remains in effect for the term of probation. Defendant JoAnn Scott posted bond pending an appeal. Accordingly, the United States does not seek a Preliminary Injunction against Defendant JoAnn Scott at this time.

enactment of FACE, this Court should preliminarily enjoin the Defendant, and others acting in concert with him, from continuing to engage in activities that violate FACE, and from coming within 25 feet of the driveway and property of PPRM.

I. STATEMENT OF FACTS

The Defendant, Kenneth Scott, frequently engages in anti-abortion activities and efforts at PPRM which include, among other things, the obstruction of individuals attempting to enter or exit PPRM, or otherwise obtain or provide reproductive health services. Declaration of Daniel Cram (“Cram Decl.”), attached as Exhibit 1, ¶¶ 6-63. He has regular contacts with PPRM, as well as clinic staff, patients and their companions, in connection with the clinic’s work involving reproductive health services, including services relating to pregnancy and pregnancy termination. Id., ¶¶ 4-63. The Defendant’s anti-abortion activities and efforts have been an ongoing, continuous, and consistent pattern of hazardous conduct. See id., ¶¶ 4-63. Through the Defendant’s anti-abortion activities, he has intended to injure, intimidate and/or interfere with—and has injured, intimidated and/or interfered with—persons obtaining or providing reproductive health services.

Defendant Kenneth Scott has engaged in physical obstruction of vehicles attempting to enter or exit PPRM by walking or standing in the PPRM driveway on at least ten separate occasions over the course of the last two years. See id., ¶¶ 8-63. Specifically, Defendant Kenneth Scott walks into the middle of the PPRM driveway in order to interfere with or intimidate persons seeking or providing services at the PPRM. Id. Defendant Kenneth Scott’s physical obstruction in the PPRM driveway creates a hazardous environment for vehicles attempting to enter or exit PPRM. Id. On the following occasions, Defendant Kenneth Scott

physically obstructed vehicles attempting to enter or exit PPRM: December 8, 2010; December 2, 2010; February 4, 2010; January 16, 2010; December 23, 2009; December 16, 2009; September 30, 2009; August 15, 2009 (three separate incidents). Id. For example, on August 15, 2009, Defendant Kenneth Scott and another protestor obstructed several vehicles attempting to enter and exit PPRM by not moving from the sides of the driveway as vehicles approached, forcing the first vehicle to take a wide turn to avoid hitting them and thus causing the other vehicles to be prohibited from continuing on their course. See id., ¶¶ 16-24. Similarly, on February 4, 2010, Defendant Kenneth Scott obstructed vehicles attempting to exit PPRM by standing in the middle of the driveway and preventing a vehicle approaching PPRM from entering the PPRM driveway. See id., ¶¶ 45-49. In yet another example, on December 8, 2010, Defendant Kenneth Scott obstructed vehicles attempting to enter PPRM when he walked into the driveway and stopped one vehicle, causing a second vehicle to stop behind the first vehicle, until that second vehicle, after waiting, reversed and pulled around the stopped vehicle through a narrow gap, an unreasonably hazardous maneuver that the vehicle never would have attempted had it not been blocked. See id., ¶¶ 57-61.

The foregoing incidents include situations where vehicles are forced to stop in order to avoid hitting Defendant Kenneth Scott and/or another vehicle that has been stopped in the PPRM driveway by Defendant Kenneth Scott; vehicles are required to enter or exit the PPRM driveway in the wrong lanes because Defendant Kenneth Scott is physically obstructing the proper lane of the PPRM driveway and/or another vehicle has been stopped by Defendant Kenneth Scott in the PPRM driveway; and even after vehicles eventually proceed to leave the PPRM driveway after Defendant Kenneth Scott's initial physical obstruction, Defendant Kenneth Scott remains in the

middle of the driveway to obstruct additional subsequent vehicles attempting to enter or exit PPRM. Defendant Kenneth Scott's physical obstructions require vehicles to stop and/or maneuver around other vehicles and persons, and thus make ingress to, and egress from, PPRM impassable or unreasonably difficult or hazardous for vehicles. See id., ¶¶ 8-61.

The Defendant's activities are of a continuing nature, and constitute physical obstruction against those seeking to obtain or provide reproductive health services. The Defendant's conduct has intentionally injured, intimidated, and/or interfered with – and continues to injure, intimidate, and/or interfere with – reproductive health clinic doctors, patients, and their companions. Therefore, the Defendant should be enjoined from violating, and committing future violations of FACE, as well as coming within 25 feet of the PPRM property or the PPRM driveway.

II. LEGAL ARGUMENT

A. Standard for Preliminary Injunction

It is well-settled that a party is entitled to preliminary injunctive relief if the party demonstrates: 1) a likelihood of success on the merits; 2) a likelihood of irreparable harm in the absence of preliminary relief; 3) the balance of equities tips in the movant's favor; and 4) granting the relief is in the public interest. Attorney General of Oklahoma v. Tyson Foods, Inc., 565 F.3d 769, 776 (10th Cir. 2009).

For the reasons set forth below, the United States has satisfied all the elements necessary for the issuance of a preliminary injunction.

B. The United States has Satisfied the Standards for Obtaining Preliminary Injunctive Relief

1. The United States has a likelihood of success on the merits.

Defendant Kenneth Scott's physical obstructions constitute FACE violations. FACE defines "physical obstruction" as "rendering impassable ingress to or egress from a facility that provides reproductive health services . . . or rendering passage to or from such a facility . . . unreasonably difficult or hazardous." 18 U.S.C. § 248(e). The statute further defines "intimidate" as "to place a person in reasonable apprehension of bodily harm to him- or herself or to another;" and defines "interfere with" as "to restrict a person's freedom of movement." *Id.*

"Acts of physical obstruction that are sufficient to create liability under FACE include obstructing or slowing access to driveways or parking lots." *New York v. Cain*, 418 F.Supp.2d 457, 480 (S.D.N.Y. 2006) (citing *New York v. Operation Rescue Nat'l*, 273 F.3d 184, 196 (2d Cir. 2001)). In *Operation Rescue National*, the court found that the actions by defendants constituting "physical obstruction" under FACE included "engaging in protest activities in front of facility entrances and driveways. Protestors often walked across driveways so as to meet oncoming cars, and then deliberately attempted to slow or even stop the cars' progress." 273 F.3d at 194. Furthermore, the court found it unpersuasive that "the protestors' purpose may have been to communicate their views" because "their activities had the effect of obstructing access to the facilities and making egress and ingress unreasonably difficult for patients." *Id.* Defendant's act of stopping a car in the middle of the driveway (or the street directly in front of a driveway) predictably results in the obstruction of the entrance or exit to PPRM; and, thus, is sufficient to satisfy FACE's intent requirement. "For purposes of FACE, 'intent' means

‘intending to perform the act and aware of the natural and probable consequences of it.’” United States v. Gregg, 32 F.Supp.2d 151, 156-57 (D. N. J. 1998).

Here, Defendant Kenneth Scott’s conduct similarly makes egress from and ingress to PPRM unreasonably difficult for patients and staff. In fact, much of his behavior here is almost identical to that of the defendants in Operation Rescue National, in that Defendant Kenneth Scott attempts to slow or stop cars entering into, or exiting from, PPRM. By approaching cars in the middle of the driveway, Defendant Kenneth Scott makes it exceedingly difficult for staff and/or patients to access the facility, forcing them to slow down, stop, or maneuver around other vehicles or persons in order to avoid a collision. See Cram Decl., ¶¶ 8-61.

Physical obstruction of an entrance or exit to a reproductive health clinic “need not be permanent or entirely successful” to violate FACE if it makes passage to or from the facility unreasonably difficult. Cain, 418 F.Supp.2d at 480, n.18. Therefore, the fact “[t]hat patients may eventually have reached the [facility] in spite of defendants’ actions is . . . beside the point.” Id.; see also Gregg, 32 F.Supp.2d at 156 (“[A]s long as access is made ‘unreasonably difficult or hazardous,’ it is not necessary to establish that there was absolutely no way to enter an abortion facility in order to prove a violation of the Act.”). “Physical obstruction” is not limited “to bodily obstruction, but rather is broadly phrased to prohibit any act rendering passage to the facility unreasonably difficult.” United States v. Mahoney, 247 F.3d 279, 284 (D.C. Cir. 2001). Where protestors have obstructed access to a reproductive health clinic driveway, “deliberately attempt[ing] to slow or even stop the cars’ progress,” and “using [their] bod[ies] to slow moving cars and push[] literature and pamphlets through car windows,” a FACE violation has been found. Operation Rescue Nat’l, 273 F.3d at 194-95.

In the instant case, as in Operation Rescue National, Defendant Kenneth Scott routinely stands in or enters the driveway of PPRM as vehicles approach to enter or exit the facility. See Cram Decl., ¶¶ 8-62. His actions create a hazardous obstruction in the first instance for the approaching vehicle, which must brake, swerve, and/or stop in order to avoid hitting the protestors. When Defendant Kenneth Scott successfully stops the driver in the driveway or in the street in front of the driveway, he then creates an additional obstruction and hazard for subsequent vehicles approaching to enter or exit PPRM, which must brake or stop in order to avoid hitting other vehicles or pedestrians. Often, these subsequent vehicles cannot enter or exit at all until the Defendant moves away from the first vehicle—which usually occurs only after the intervention of a PPRM security guard. If they can enter or exit, the drivers have limited visibility and movement and must often use the wrong side of the driveway or reverse and change direction to swerve around the car obstructing the driveway.

2. Reproductive health clinic staff and patients are being, have been and will be irreparably harmed by the Defendant’s FACE violations unless the Court issues a preliminary injunction.

The irreparable harm element of a preliminary injunction is satisfied if a plaintiff demonstrates “a significant risk that he or she will experience harm that cannot be compensated after the fact by monetary damages.” RoDa Drilling Co. v. Siegal, 552 F.3d 1203, 1210 (10th Cir. 2009) (internal quotation and citation omitted). In making this determination, a court should assess “whether such harm is likely to occur before the district court rules on the merits.” Id.

Here, the Defendant’s motive is to intimidate and interfere with patients and staff obtaining and/or providing, or attempting to obtain and/or provide, reproductive health services. Defendant’s unlawful protest activity in the middle of the PPRM driveway has become routine,

resulting in frequent and ongoing physical obstructions against individuals obtaining or providing, or seeking to obtain or provide, reproductive health services from PPRM. The denial of this preliminary injunction would result in such intimidation and interference continuing, and potentially greater physical harm to more patients and staff. Furthermore, the harm is relatively certain to occur, given the Defendant's presence at PPRM nearly every day and his hazardous activities obstructing vehicles, including as recently as on June 4, 2011. See Cram Decl., ¶¶ 63-64. Plainly stated, as long as the Defendant's conduct is allowed to continue unfettered, PPRM staff and patients remain at risk of irreparable harm.

3. The balance of the equities weighs strongly in favor of the reproductive health clinic staff and patients; granting injunctive relief will not result in any harm to the Defendant.

The Defendant will not be injured in any manner if this Court issues a preliminary injunction. A preliminary injunction will not prohibit the Defendant from exercising his First Amendment rights to free expression. Injunctive relief such as a buffer zone is an appropriate remedy for a FACE violation where the requested relief "burdens no more speech than necessary to serve a significant government interest," Madsen v. Women's Health Center, 512 U.S. 753, 765 (1994), and is "narrowly tailored to the evidence presented." United States v. McMillan, 946 F. Supp. 1254, 1269 (S.D.Miss. 1995). It is clearly established that the government has a significant interest in protecting unfettered access to health care facilities. Hill v. Colorado, 530 U.S. 703, 715 (2000); Madsen, 512 U.S. at 767-68. Indeed, courts have upheld permanent buffer zones of 25 feet or greater in the past. Madsen, 512 U.S. 753 (36-foot buffer zone around clinic entrance and driveway); McMillan, 946 F. Supp. 1254 (25-foot buffer zone around clinic property)(In a contempt proceeding, this buffer zone has since been increased to 50 feet. United

States v. McMillan, 3:95-cv-633, Order, April 29, 2008). The U.S. Supreme Court has also recognized that these types of injunctions protect the government’s “strong interest in ensuring the public safety and order,” which includes “promoting the free flow of traffic on public streets and sidewalks.” Madsen, 512 U.S. at 768; Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357, 375 (1997). Furthermore, the conduct that the United States seeks to enjoin is not legally protected. No legally cognizable damages can or will result to the Defendant if a preliminary injunction issues.

4. Injunctive relief against the Defendant is in the public interest.

Reproductive health services are a matter of public interest and concern, and the public will best be served by the granting of a preliminary injunction in the instant matter. A significant government interest lies in allowing unfettered access to health care facilities. See Madsen, 512 U.S. at 767-68; see also Independent Living Center of Southern California, Inc. v. Maxwell-Jolly, 572 F.3d 644, 659 (9th Cir. 2009) (finding district court did not abuse discretion in giving strong weight, as part of preliminary injunction analysis, to the public interest in ensuring access to health care). As former Attorney General Reno emphasized during the passage of FACE,

[I]t is very important that the Attorney General have authority to file a civil action. This approach follows the model of other statutes protecting individual rights—notably the Fair Housing Act—by shifting the burden of civil enforcement from private victims to the government, which is often better able to pursue such cases and vindicate the enormous interest that our society has in protecting individual rights.

S. Rep. No. 103-117, at 22 (1993).

In addition, as outlined above, Defendant’s physical obstructions in the middle of the PPRM driveway are a part of his standard routine at PPRM. Patients and staff of PPRM are consistently expected to maneuver around Defendant, making passage to and from the PPRM

unreasonably difficult or hazardous. Defendant's physical obstructions have been an ongoing, continuous, and consistent pattern of hazardous conduct. See Cram Decl., ¶ 62-63 and Declaration of Special Agent Janessa Boteler ("Boteler Decl."), attached as Exhibit 2, ¶ 6. In fact, Defendant Kenneth Scott engaged in similar hazardous conduct as recently as June 4, 2011. Cram Decl., ¶ 63. As a result of Defendant's ongoing activity in the middle of the PPRM driveway, PPRM security personnel have had to focus its efforts to monitor and manage the safety risks to patients and staff of PPRM. Id. ¶ 64. Without immediate court intervention, Defendant will continue to create hazardous physical obstructions against patients and staff of PPRM. See id., ¶ 65 and Boteler Decl., ¶7. The trajectory and regularity of Defendant's unlawful activities necessitates an immediate injunction.

Moreover, Defendant's behavior continues despite a number of criminal convictions related to his protest activities: trespassing and disturbing the peace 1992; two counts of disturbing the peace in 1995; two counts of disturbing the peace in 1996; and disorderly conduct in 2002. See Boteler Decl. ¶ 4. In addition, because of Defendant Kenneth Scott's unlawful protest activity against a reproductive health provider in Boulder, Colorado, a Gilpin County court judge issued a permanent stay away order in 1996. See Boteler Decl. ¶ 5. These convictions have not prevented or limited Defendant's unlawful protest activity. Accordingly, it is in the public interest to immediately invoke the Federal Court's authority to enforce FACE to ensure that Defendant's unlawful protest activity at PPRM does not continue. The requested preliminary injunction is plainly in the public interest.

III. CONCLUSION

For the foregoing reasons, this Court should issue a preliminary injunction, enjoining

Defendant Kenneth Scott and his representatives, agents, employees and any others acting in concert or participation with him, from coming within 25 feet of PPRM property, from coming within 25 feet of the driveway of the PPRM, and from violating the Freedom of Access to Clinic Entrances Act.

Respectfully submitted,

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 /s/ Je Yon Jung_____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the United States' Motion for Preliminary Injunction and Memorandum of Law in Support of the United States' Motion for Preliminary Injunction were served by first class mail on June 9, 2011, on the following:

Kenneth Scott
98 Fir Drive
Winter Park, CO 80482

JoAnn Scott
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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UNITED STATES OF AMERICA,)	
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Plaintiff,)	Civil Action No.: 11-CV-01430-PAB-MEH
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v.)	
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KENNETH SCOTT and JOANN SCOTT,)	
)	
Defendants.)	
_____)	

DECLARATION OF DANNY CRAM

I, Danny Cram, declare under penalty of perjury that:

1. I am a Security Supervisor at Planned Parenthood of the Rocky Mountains (“PPRM”), which operates an administrative and clinical facility located at 7155 East 38th Avenue, Denver, Colorado, 80207.
2. I have worked at PPRM for approximately six years.
3. Prior to my position at PPRM, I was a police officer with the Denver Police Department for 25 years.
4. PPRM houses administrative staff and offices for the Rocky Mountain region, and provides reproductive health services, including abortion procedures. The clinic is open from Monday through Saturday, and typically receives patients between 9:00 a.m. until noon.
5. The PPRM facility consists of a main building and a parking lot for staff and patients, and these are enclosed by a fence surrounding the facility. The PPRM facility is the only facility within the enclosure. The only available means for non-emergency entry and exit of vehicles and pedestrians to and from PPRM is through the driveway to the PPRM parking lot,

which opens onto Pontiac Street. Abutting the driveway on either side is a sidewalk, which runs along Pontiac Street.

6. I am familiar with Defendant Kenneth Scott. The Defendant and his associates regularly gather on the sidewalk and in the driveway outside PPRM during the hours the clinic is open, when patients and staff are entering and exiting the facility. They typically bring large signs and placards expressing opposition to abortion.

7. As a Security Supervisor, I have personally witnessed many of the events outlined below and/or personally reviewed the video recordings of the events to confirm the participation and actions of the Defendant.

August 15, 2009 (8:23 a.m.)

8. On August 15, 2009, at approximately 8:23 a.m., Defendant Kenneth Scott physically obstructed multiple vehicles attempting to enter and exit PPRM.

9. As one car approached the driveway to exit the facility, Defendant Kenneth Scott walked into the driveway carrying a large sign, impeding its exit.

10. Defendant Kenneth Scott remained standing in the middle of the driveway while two additional cars attempted to enter the facility, impeding their entrance.

August 15, 2009 (9:33 a.m.)

11. On August 15, 2009, at approximately 9:33 a.m., Defendant Kenneth Scott and an unidentified protestor physically obstructed two vehicles attempting to exit and enter PPRM.

12. Defendant Kenneth Scott and the unidentified protestor stood in the driveway as a motorcycle approached to exit the facility.

13. As the motorcycle entered the driveway, Defendant Kenneth Scott, carrying a large sign, walked in front of the motorcyclist, who was forced to stop.

14. Meanwhile, another vehicle approached to enter the facility, and the unidentified protestor walked into the street toward the vehicle as it turned into the driveway.

15. Both vehicles were forced to avoid Defendant Kenneth Scott and the unidentified protestor in order to use the driveway to exit and enter the facility.

August 15, 2009 (9:36 a.m.)

16. On August 15, 2009, at approximately 9:36 a.m., Defendant Kenneth Scott and several unidentified protestors physically obstructed three vehicles attempting to enter and exit PPRM.

17. An unidentified protestor stood in one side of the driveway, holding a large sign, and did not move as a vehicle approached to enter the facility, causing the approaching vehicle to take a wide turn into the driveway in order to avoid her.

18. The vehicle entered the driveway in the exit lane of the driveway, and Defendant Kenneth Scott, carrying a large sign, walked into the driveway and approached the driver's side of the vehicle.

19. At the same time, another vehicle approached from inside the parking lot in order to exit the facility.

20. Because the first vehicle was already occupying the exit lane, both vehicles stopped, and the first vehicle reversed out of the driveway and into the street in order to allow the other vehicle room to exit.

21. Neither Defendant Kenneth Scott nor the unidentified protestor moved out of the driveway, and when the first vehicle re-entered the driveway, Defendant Kenneth Scott initiated a conversation with the driver.

22. While Defendant Kenneth Scott had the vehicle stopped in the middle of the driveway, a third car approaching to enter PPRM was forced to stop in the street, unable to enter.

23. I directed the first vehicle to drive into the parking lot. An unidentified protestor approached the car waiting to enter and then moved into the driveway as the car turned, cutting off access to part of the driveway.

24. Meanwhile, Defendant Kenneth Scott remained standing in the middle of the driveway, forcing the waiting vehicle to navigate between Defendant Kenneth Scott and the unidentified protestor, who were then both in the driveway.

September 30, 2009

25. On September 30, 2009, beginning at approximately 9:48 a.m., Defendant Kenneth Scott created a physical obstruction for two vehicles attempting to enter and exit PPRM.

26. As a vehicle turned into the driveway in order to enter PPRM, Defendant Kenneth Scott initiated a conversation, and the driver stopped the car in the exit lane of the driveway.

27. Defendant Kenneth Scott, carrying a large sign, knelt in the driveway next to the driver's side window and spoke to the occupant(s) of the car for more than four minutes.

28. While Defendant Kenneth Scott had the first car stopped in the driveway, a vehicle exiting the facility was forced to use the entrance lane to exit because Defendant Kenneth Scott and the first car were stopped in the exit lane of the driveway.

29. Another vehicle approaching to enter the facility was also obstructed while Defendant Kenneth Scott had the first car stopped in the driveway, and initially could not enter because of the obstruction created by Defendant Kenneth Scott speaking with the occupants of the first car in the middle of the driveway.

30. After the first car moved, Defendant Kenneth Scott remained in the driveway as the waiting vehicle entered the facility, further impeding its entrance.

December 16, 2009

31. On December 16, 2009, beginning at approximately 10:47 a.m., Defendant Kenneth Scott physically obstructed two vehicles attempting to enter and exit PPRM.

32. Defendant Kenneth Scott stood in the middle of the PPRM driveway and did not move as a vehicle approached to enter the driveway, forcing the vehicle to brake and make a narrow turn into the driveway to avoid hitting Defendant Kenneth Scott.

33. Because of Defendant Kenneth Scott's actions, the car slowed as it turned into the driveway, and Defendant Kenneth Scott approached the driver's side window, and spoke with the occupant(s) of the car for more than four minutes.

34. While Defendant Kenneth Scott had the first car stopped in the driveway, a second vehicle attempted to exit the facility, but was initially unable to leave because of the obstruction created by Defendant Kenneth Scott speaking with the occupants of the first car in the middle of the driveway.

35. After a delay, Defendant Kenneth Scott moved away from the first car, but remained in the driveway, forcing the exiting car to squeeze between Defendant Kenneth Scott and the first car in order to exit the facility.

December 23, 2009

36. On December 23, 2009, at approximately 9:24 a.m., Defendant Kenneth Scott physically obstructed a vehicle attempting to enter PPRM.

37. Defendant Kenneth Scott walked into the PPRM driveway as a vehicle approached to enter the driveway.

38. The ground conditions were snowy and slippery, and the approaching vehicle skidded past the driveway and past Defendant Kenneth Scott.

39. As the vehicle reversed out of the skid, Defendant Kenneth Scott, still in the driveway, approached the passenger side of the vehicle.

40. As the vehicle continued to reverse, Defendant Kenneth Scott followed alongside it, walking in the driveway and then the street in front of the driveway, forcing the vehicle to back up and drive around him in order to enter the facility.

January 16, 2010

41. On January 16, 2010, at approximately 10:20 a.m., Defendant Kenneth Scott physically obstructed a vehicle attempting to enter PPRM.

42. As the vehicle approached to enter the PPRM driveway, it was forced to brake as three unidentified protestors, who had been standing in the driveway, moved.

43. While the vehicle was slowed to a near-stop, Defendant Kenneth Scott walked into the driveway and stopped in the middle, next to the front of the car.

44. Defendant Kenneth Scott did not move from this position, forcing the vehicle to turn narrowly to avoid Defendant Kenneth Scott as it continued to enter the facility.

February 4, 2010

45. On February 4, 2010, at approximately 9:48 a.m., Defendant Kenneth Scott physically obstructed two vehicles attempting to exit PPRM.

46. As a vehicle approached the driveway to exit the facility, Defendant Kenneth Scott walked into the driveway across its path, forcing the vehicle to slow.

47. Because of Defendant Kenneth Scott's actions, the car stopped in the middle of the driveway, and Defendant Kenneth Scott proceeded to speak with the occupant(s) of the car.

48. While Defendant Kenneth Scott had the first vehicle stopped in the driveway, another vehicle attempting to exit the facility was initially unable to leave.

49. After the first vehicle exited the facility, as the second vehicle continued into the driveway to exit, Defendant Kenneth Scott walked across the driveway towards the exiting vehicle, further impeding its egress.

December 2, 2010

50. On December 2, 2010, at approximately 10:22 a.m., Defendant Kenneth Scott physically obstructed multiple vehicles attempting to enter and exit PPRM.

51. As a vehicle approached to enter PPRM, Defendant Kenneth Scott, carrying a large sign, walked into the middle of the drive, forcing the vehicle to slow down and navigate around Defendant Kenneth Scott in order to avoid hitting him.

52. Because of Defendant Kenneth Scott's actions, the vehicle stopped in the middle of the driveway and Defendant Kenneth Scott initiated conversation at the driver's side window.

53. While Defendant Kenneth Scott had the first vehicle stopped in the driveway, another vehicle attempting to enter the facility was forced to stop and wait behind the stopped vehicle and Defendant Kenneth Scott.

54. Another vehicle then approached to enter the facility, and was also forced to wait while Defendant Kenneth Scott had the first vehicle stopped in the driveway, forming a line of three vehicles.

55. After the first vehicle continued into the parking lot, Defendant Kenneth Scott remained standing in the middle of the driveway as the second vehicle entered the facility, further impeding that vehicle's entrance.

56. As the third vehicle entered the driveway, Defendant Kenneth Scott walked towards the front of the vehicle, further narrowing the lane through which it could enter and impeding its entrance.

December 8, 2010

57. On December 8, 2010, at approximately 10:35 a.m., Defendant Kenneth Scott created a physical obstruction for two vehicles attempting to enter PPRM.

58. Defendant Kenneth Scott stood in the PPRM driveway as a vehicle approached to enter the facility, and as the vehicle turned into the driveway, Defendant Kenneth Scott approached it and held the large sign he was carrying in front of the driver's side of the vehicle.

59. Because of Defendant Kenneth Scott's actions, the vehicle stopped in the middle of the driveway, and Defendant Kenneth Scott initiated a conversation with the driver.

60. While Defendant Kenneth Scott had the first car stopped in the driveway, another vehicle attempting to enter the facility was initially unable to enter.

61. Because Defendant Kenneth Scott continued to speak to the driver of the stopped vehicle, the second vehicle reversed, and then pulled around Defendant Kenneth Scott and the stopped vehicle, driving through the narrow gap between them and the gate in order to enter the facility.

* * *

62. Defendant's actions have been ongoing at PPRM since its administrative and clinical facility was opened in the summer of 2008.

63. The foregoing incidents are representative and typical of Defendant's behavior.

Defendant engages in this behavior regularly, if not daily, whenever Defendant is at PPRM. In fact, as recently as June 4, 2011, I have witnessed Defendant continue to engage in hazardous behavior by standing or walking into the middle of the PPRM driveway as vehicles approach.

64. Defendant Kenneth Scott's behavior in the middle of the PPRM driveway has increased safety risks and concerns. Accordingly, Defendant Scott has caused PPRM to focus and

prioritize security resources and personnel on traffic and safety issues for patients and staff entering and exiting the PPRM parking lot.

65. Without Court intervention, I believe that Defendant Kenneth Scott will continue to create hazardous physical obstructions for patients and staff of PPRM.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on the 9th day of June, 2011, in Denver, Colorado.

/s/ Danny Cram
Danny Cram

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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UNITED STATES OF AMERICA,)	
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Plaintiff,)	Civil Action No.: 11-CV-01430-PAB-MEH
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v.)	
)	
KENNETH SCOTT and JOANN SCOTT,)	
)	
)	
Defendants.)	
_____)	

DECLARATION OF SPECIAL AGENT JANESSA BOTELER

I, Janessa Boteler, declare under penalty of perjury that:

1. I am a Special Agent with the Federal Bureau of Investigation (“FBI”) in Denver, Colorado.
2. I have responded to the Planned Parenthood of the Rocky Mountains (“PPRM”), located at 7155 East 38th Avenue, Denver, Colorado, 80207, on numerous occasions regarding the Defendants’ protest activity.
3. I am aware of Defendant Kenneth Scott’s criminal history contained in the National Crime Information Center database, and I am aware of Defendant Scott’s convictions related to his protest activities against reproductive health care centers and providers.

4. Specifically, Defendant Kenneth Scott was convicted of the following crimes: trespassing and disturbing the peace in 1992; two counts of disturbing the peace in 1995; two counts of disturbing the peace in 1996; and disorderly conduct in 2002.
5. I am also aware of a published court opinion related to Defendant Kenneth Scott's anti-abortion activities, specifically Scott v. Hern, 216 F.3d 897 (10th Cir. 2000). As outlined in this published opinion, Defendant Kenneth Scott has had, since 1996, a permanent restraining order against him, requiring him to stay one (1) mile away from Dr. Warren Hern, a reproductive health services provider in Boulder, Colorado.
6. Defendant's physical obstructions have been an ongoing, continuing, and consistent pattern of hazardous conduct against PPRM patients and staff.
7. Without Court intervention, I believe that Defendant Kenneth Scott will continue to create hazardous physical obstructions for patients and staff of PPRM.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on the 9th day of June , 2011, in Denver, Colorado .

 /s/ Janessa Boteler _____
Janessa Boteler
Special Agent, FBI