

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**FEMHEALTH USA, INC., d/b/a  
CARAFEM,**

**Plaintiff,**

**v.**

**RICKEY NELSON WILLIAMS, JR.;  
BEVELYN Z. WILLIAMS, JR.;  
EDMEE CHAVANNES; AT THE WELL  
MINISTRIES; OPERATION SAVE  
AMERICA; JASON STORMS;  
CHESTER GALLAGHER; MATTHEW  
BROCK; COLEMAN BOYD; FRANK  
LINAM; BRENT BUCKLEY; and AJ  
HURLEY,**

**Defendants.**

**Civil Action No. 3:22-cv-00565**

**JUDGE CAMPBELL  
MAGISTRATE JUDGE FRENSLEY**

**STATEMENT OF INTEREST OF THE UNITED STATES**

Congress in 1994 passed the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, commonly called the FACE Act.<sup>1</sup> The FACE Act reflects Congress's intent to prohibit violent, threatening, damaging, and obstructive conduct intended to injure, intimidate, or interfere with the right to seek, obtain, or provide lawful reproductive health services. *Id.*

The United States submits this Statement of Interest to make clear that the FACE Act prohibits temporary physical obstructions or incomplete blockages of clinic access to reproductive health facilities.

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<sup>1</sup> Freedom of Access to Clinic Entrances Act of 1993, S. 636, 103d Cong. (as introduced in Senate, March 23, 1993).

## INTEREST OF THE UNITED STATES

The United States has an interest in enforcing federal laws that protect access to reproductive health services, including but not limited to abortion care, and ensuring the safety of patients, providers, and staff at health facilities that offer such services, wherever and whenever they remain legal. That includes protecting patients from those seeking to physically obstruct their access to services in their own states as well as their access to services in other states where those services are lawful.

Specifically, the United States is charged with enforcing the FACE Act, which authorizes the Attorney General to bring criminal charges for violations, or civil suits when there is reasonable cause to believe that a person or entity may suffer injury as a result of violations of the Act. 18 U.S.C. §§ 248(b), (c)(2). Using its civil authority, the United States has brought successful FACE Act enforcement actions throughout the country. *See, e.g., United States v. Retta*, No. 1:11-cv-1280-JEB (D.D.C. Jan. 13, 2014); *United States v. Scott*, No. 1:11-cv-01430-PAB (D. Colo. June 1, 2011); *United States v. Kroack*, No. 11-cv-0432-MJP (W.D. Wash. May 3, 2011). For example, the United States successfully obtained a temporary restraining order against members of Operation Save America (OSA) who obstructed a clinic in Louisville, Ky. during OSA's National Event in 2017. *United States v. Thomas*, No. 3:17-cv-432-DJH, W.D. Ky. (July 21, 2017). There, a group of OSA members approached the clinic entrance as a coordinated group, sat in front of the door, and refused to move. The United States entered settlement agreements with the 10 defendants in *Thomas* that required them to pay civil penalties and not to enter clinic property or a buffer zone around the clinic for a defined period of time. Additionally, the United States Department of Justice established the National Task Force on Violence Against Reproductive Health Care Providers in 1998, which, among other things, focuses on enhancing the training of federal, state, and local law

enforcement on issues relating to clinic violence, supporting federal civil investigations and litigation of reproductive health-related violence, and investigating incidents of force, threats, and blockades targeting reproductive health care providers, patients, and facilities.<sup>2</sup>

The United States has authority to file this Statement of Interest under 28 U.S.C. § 517, which permits the Attorney General to attend to the interests of the United States in any case pending in federal court.

### **BACKGROUND**

Plaintiff carafem operates a number of health centers that offer a range of reproductive health services, including at its facility in Mt. Juliet, Tenn. It filed suit on July 29, 2022, seeking an emergency temporary restraining order and statutory compensatory damages against the defendants named in its complaint. Compl. (ECF No. 1, ¶ 42). The Court granted a TRO on July 29 (ECF No. 9), and subsequently extended the TRO twice, most recently to September 9, when it also scheduled a hearing. (ECF Nos. 11, 36). Plaintiff amended its complaint on August 19, adding state law claims and one defendant. (ECF No. 38). OSA and four individual defendants, five of the twelve defendants named in the Amended Complaint (the “Represented Defendants”), responded to the Amended Complaint on August 25. (ECF No. 42). On August 25, Tennessee’s “Human Life Protection Act,” 2019 Tenn. Pub. Acts, ch. 351, which bans nearly all abortion care in the state, took effect.

### **DISCUSSION**

Congress enacted the FACE Act with bi-partisan support in the wake of significant violence aimed at providers of legal abortion care. In 1993, when Congress was considering the

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<sup>2</sup> <https://www.justice.gov/crt/national-task-force-violence-against-reproductive-health-care-providers>.

FACE Act, there was an urgent need for federal protections for reproductive health providers.<sup>3</sup> The Congressional hearings on the FACE Act took place months after a provider was shot and killed in a Pensacola, Fla. parking lot during an anti-abortion protest.<sup>4</sup> Almost 30 years later, the threat to providers, staff, patients, law enforcement, and bystanders remains real. In 2015, an individual walked into a Planned Parenthood clinic in Colorado Springs and killed three people, including a police officer, and wounded five officers and four civilians.<sup>5</sup> Recently, at least two clinics have been burned to the ground, including one in Tennessee.<sup>6</sup>

This statement of interest is limited to the legal issues raised by the parties' pleadings concerning the reach of the FACE Act. First, and as prior courts have consistently found, the FACE Act should be broadly interpreted to include all forms of physical obstructions to clinic access, even where those obstructions are temporary, incomplete, or do not employ particular tactics.

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<sup>3</sup> *Abortion Clinic Violence: Hearing Before the Subcomm. on Crime & Crim. Just. of the House Comm. on the Judiciary* 103rd Cong. 2 (1993) (statement of Rep. Schumer, Chairman, Subcomm. on Crime & Crim. Just.). (“In the last few years, there were 28 bombings, 61 arsons, 266 bomb threats, 57 acid attacks . . . 395 incidents of vandalism, 68 assaults and hundreds of death threats by phone and mail.”); See *The Freedom of Access to Clinic Entrances Act of 1993: Hearing on S.636 Before the S. Comm. On Lab. & Hum. Res.*, 103rd Cong. 1 (1993) (statement of Sen. Durenberger) (“... I do know that this madness must stop. In this regard, it is important to remember that the legislation we are considering today is not necessarily directed at violent behavior. The issue today is primarily one of access.”).

<sup>4</sup> See *The Freedom of Access to Clinic Entrances Act of 1993: Hearing on S.636 Before the S. Comm. On Lab. & Hum. Res.*, 103rd Cong. 1 (1993) (opening statement of Sen. Kennedy) (“Clinics are assaulted with human blockades and invasions. They are bombed, vandalized, sometimes burned to the ground . . . In Pensacola, FL, this past March, [a] physician[], Dr. David Gunn, was shot and killed.”).

<sup>5</sup> Trevor Hughes, *Planned Parenthood Shooter ‘Happy’ with His Attack*, USA TODAY (Apr. 11, 2016, 9:30 p.m.), <https://bit.ly/2Y59uBR>; *Planned Parenthood: Three Die in Shooting at Colorado Clinic*, BBC (Nov. 28, 2015), <https://bbc.in/2XCIRW9>.

<sup>6</sup> Amanda Holpuch, *Arson Destroyed Knoxville Planned Parenthood Clinic, Officials Say*, N.Y. Times (Jan. 7, 2022) <https://www.nytimes.com/2022/01/07/us/knoxville-planned-parenthood-arson.html>; *Masked, hooded woman seen on video setting fire at what would be Wyoming’s only abortion clinic*, CBS NEWS (Jun. 9, 2022, 8:09 a.m.) <https://www.cbsnews.com/news/wyoming-only-abortion-clinic-arson-video-reward>.

Second, contrary to the suggestion in the Represented Defendants' response, the changing legal landscape governing abortion care in America has no effect on the validity of the FACE Act.

**I. Temporary or Incomplete Obstructions of a Clinic Constitute FACE Act Violations, Regardless of the Particular Tactics Used to Block Clinic Access.**

Under the FACE Act, whoever: 1) by force, threat of force, or physical obstruction; 2) intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with; 3) any person because that person is, or in order to intimidate such person from, providing or obtaining reproductive health services, violates the FACE Act and may be subject to civil and criminal penalties. 18 U.S.C. § 248(a)(1). The FACE Act 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 "interfere with" as "to restrict a person's freedom of movement." *Id.*

First, despite the Represented Defendants' claims to the contrary (*see* ECF No. 42, pp. 19-20), the FACE Act's definition of "physical obstruction" covers temporary obstruction. While the statute requires actual physical obstruction of an entrance to or exit from a clinic, *see New York ex rel. Spitzer v. Operation Rescue Nat'l*, 273 F.3d 184, 195 (2d Cir. 2001), temporarily blocking access to or from a clinic is sufficient to establish liability. For example, courts have held that standing directly in front of patients who are trying to enter a clinic or standing near car doors so that patients cannot exit their cars constitutes obstruction for purposes of the FACE Act. *New York ex rel. Spitzer v. Cain*, 418 F. Supp. 2d 457, 480 (S.D.N.Y. 2006). The Second Circuit held that a protestor who dropped items on the ground and retrieved them "in slow motion" in order to slow access to a clinic driveway would likely be found to have physically obstructed access to that clinic. *Operation Rescue Nat'l*, 273 F.3d at 195.

Second, contrary to the Represented Defendants’ insinuation that they did not “obstruct the entrance” to Carafem because “Providence Pavilion in which the Carafem clinic is located has three entrances,” (ECF No. 42, fn 4), the FACE Act does not require that offenders block the only or even the primary access point to a clinic. For example, courts have found that directly blocking the entrance to a suite in a larger building constitutes a FACE Act violation, *see Gregg*, 32 F. Supp. 2d at 153, and that a single person blocking a secondary door primarily used as an emergency exit also constitutes obstruction for purposes of the statute. *United States v. Mahoney*, 247 F.3d 279, 284 (D.C. Cir. 2001). Similarly, obstructive actions that prevent people from leaving a reproductive health facility violate the FACE Act. *Mahoney*, 247 F.3d at 284 (“In light of the rash of attacks on women's health clinics, an emergency exit may be a particularly important means of egress.”).

Third, “physical obstruction” of a clinic does not need to employ particular tactics to fall under the scope of the FACE Act. The FACE Act is not limited “to bodily obstruction, but rather is broadly phrased to prohibit any act rendering passage to the facility unreasonably difficult.” *Mahoney*, 247 F.3d at 284. When Congress debated the FACE Act, it specifically contemplated that seemingly small, nonviolent obstructions fall within the scope of the Act.<sup>7</sup>

Courts have routinely found that sitting or kneeling in front of a doorway to block access to a reproductive health facility constitutes an impermissible obstruction under the FACE Act. *See*,

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<sup>7</sup> *Abortion Clinic Violence: Hearing Before the Subcomm. on Crime & Crim. Just. of the House Comm. on the Judiciary* 103rd Cong. 138–39 (1993) (statement of Rep. Charles Schumer, Chairman, Subcomm. on Crime & Crim. Just.). Even witnesses opposed to the FACE Act acknowledged that nonviolent individual actions would constitute “physical obstruction” within the meaning of the Act. *See The Freedom of Access to Clinic Entrances Act of 1993, Hearing on S. 636 Before the S. Comm. on Lab. & Hum. Res.* 103rd Cong. 119 (prepared statement of Carol Crossed) (“‘Physical obstruction’ can be done by sitting in silence and singing, or by blowing up the door.”).

e.g., *United States v. Thomas*, No. 317-cv-432 (W.D. Ky. 2017); *United States v. Alaw*, No. 98-1446 (D.D.C. Jan. 21, 2000); *United States v. Gregg*, 32 F. Supp. 2d 151 (D.N.J. 1998); *United States v. Lynch and Moscinski*, No. 95 Civ. 9223 (JES) (S.D.N.Y. Feb. 26, 1996). Critically, even where no one approaches the door of a clinic, these kinds of small, nonviolent obstructions constitute interference with those seeking to obtain or provide reproductive services for purposes of the FACE Act. *United States v. Dugan*, 450 Fed. Appx. 20, 22 (2d Cir. 2011) (finding a defendant who knelt in front of a clinic entrance “in a silent, prayerful position” when no patients approached violated the FACE Act).

The Represented Defendants’ effort to minimize and distinguish caselaw concerning physical obstruction under the FACE Act because they deem it “relatively antiquated” (ECF No. 42, p. 19), fails. For example, the Represented Defendants mischaracterize the history, findings, and holdings in *New York by James v. Griep*, 11 F.4th 174 (2d Cir. 2021). The Represented Defendants correctly state that the Second Circuit vacated and remanded the case in a second opinion by the same panel. (ECF No. 42, p. 19). But the Represented Defendants omit that, in rehearing the matter, the District Court held that a defendant violated the FACE Act by engaging “in a purposeful ‘slow walk’ in front of patients” in order to “delay the patients’ access to [the clinic] . . .,” finding instead that irreparable harm was not actual and imminent because the defendant only engaged in the conduct a “few times” and pledged not to repeat the conduct.” *New York by Underwood v. Griep*, No. 17-CV-3706 (CBA), 2018 WL 3518527, at \*42 (E.D.N.Y. July 20, 2018), *aff’d in part, vacated in part, remanded sub nom. New York v. Griep*, 991 F.3d 81 (2d Cir. 2021), *reh’g granted and opinion vacated sub nom. People v. Griep*, 997 F.3d 1258 (2d Cir. 2021), and on *reh’g sub nom. New York by James v. Griep*, 11 F.4th 174 (2d Cir. 2021), and *aff’d and remanded sub nom. New York by James v. Griep*, 11 F.4th 174 (2d Cir. 2021); *see also People*

*of State of New York ex rel. Spitzer v. Kraeger*, 160 F. Supp. 2d 360, 376 (N.D.N.Y. 2001) (finding that four defendants violated the FACE Act by “pac[ing] slowly in front of the clinic walkway with large signs, and stand[ing] directly in front of the walkway with large signs, sometimes side by side, blocking access to the clinic).”

Accordingly, the Represented Defendants are incorrect to suggest that the FACE Act does not prohibit temporary or incomplete physical obstructions of a clinic, or that physical obstruction under the Act must employ any particular tactics.

## **II. The FACE Act Is the Law of the Land.**

The Represented Defendants’ assertion that “without a constitutional right to abortion, the purpose of FACE and the need to protect access to clinic entrances is at best questionable” is wrong. (ECF No. 42, p. 23). Congress routinely regulates conduct, including through civil and criminal penalties, with no nexus to constitutionally-protected rights. *See, e.g.*, Animal Enterprise Terrorism Act, 18 U.S.C. § 43 (creating criminal penalties for damaging or interfering with animal enterprises); 18 U.S.C. § 2282A (creating criminal penalties for knowingly placing devices or dangerous substances in navigable waters that are likely to damage vessels or their cargoes or interfere with safe navigation of waterways).

More to the point here, neither the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. \_\_\_, 2022 WL 2276808 (June 24, 2022), nor Tennessee’s Human Life Protection Act, which took effect on August 25, has any impact whatsoever on the legality—or the necessity—of the FACE Act.

Additionally, the FACE Act protects access to all kinds of “reproductive health services,” including but not limited to abortion. 18 U.S.C. § 248(a)(1). The statute defines “reproductive health services” as “services provided in a hospital, clinic, physician’s office, or other facility, and



includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.” 18 U.S.C. § 248(e)(5). In other words, a clinic or person need not offer abortion services to be protected by the FACE Act, which is evident from the fact that courts have found that the FACE Act protects pro-life organizations that provide pregnancy counseling, including information on pregnancy, fetal development, and alternatives to abortion, doctor’s referrals, pregnancy tests, and other similar services. *Greenhut v. Hand*, 996 F. Supp. 372, 375–76 (D.N.J. 1998).

The Represented Defendants also briefly suggest that the FACE Act is “arguably unconstitutional under [a] viewpoint discrimination analysis . . .” (ECF No. 42, p. 23). Reserving all of its rights pursuant to Federal Rule of Civil Procedure 5.1 and 28 U.S.C. § 2403,<sup>8</sup> the United States today does not address the constitutionality of the FACE Act, but notes that courts

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<sup>8</sup> The United States is authorized to intervene in any action where the constitutionality of an Act of Congress is drawn into question. *See* 28 U.S.C. § 2403. Further, “[a] party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal statute must promptly” file a notice of constitutional question and serve that notice and the relevant paper on the Attorney General of the United States, after which the court “must, under 28 U.S.C. § 2403, certify” that question to the Attorney General. Fed. R. Civ. P. 5.1(a). Here, the Represented Defendants have not asserted a counterclaim challenging the constitutionality of the FACE Act, do not appear to be raising the asserted unconstitutionality of the statute as a defense to civil liability, and have not filed or served a notice of constitutional question; instead, the Represented Defendants have noted in passing, and solely in the context of an argument about irreparable injury, their observation that the FACE Act is “arguably unconstitutional.” (ECF No. 42, p.23). That is insufficient to present a constitutional challenge to an Act of Congress. *See* Fed. R. Civ. P. 5.1(a). Nor does the Court appear to have certified the constitutional question pursuant to 28 U.S.C. § 2403(a) and Federal Rule of Civil Procedure 5.1(b). Thus, the United States believes that a constitutional challenge to the FACE Act is not presented in this litigation and that a decision on whether to intervene in this case would be premature at this time. However, to the extent the Court disagrees and finds it necessary to adjudicate the constitutionality of any provision of the FACE Act, the United States respectfully requests that, pursuant to Rule 5.1 and 28 U.S.C. § 2403, the Court notify the United States and provide 60 days for the United States to obtain authorization to intervene to defend the statute’s constitutionality. *See* 28 C.F.R. § 0.21. Counsel for the United States will monitor the Court’s docket for any such notification.

repeatedly and consistently have found the statute to be constitutional. *See, e.g., United States v. Dinwiddie*, 76 F.3d 913, 921 (8th Cir. 1996).

### CONCLUSION

The FACE Act's prohibition on force and physical obstruction extends to temporary interference with clinic access and incomplete blockages of entrances to or exits from reproductive health facilities. The FACE Act also remains the law of the land and protects access to reproductive health services, including abortion where it remains legal.

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### **CERTIFICATE OF SERVICE**

I certify that on September 1, 2022, a true and correct copy of the foregoing was served via the Court's CM/ECF system, if registered. A service copy also was served via U.S. Postal Service Certified Mail, postage prepaid, and/or via email, if not registered, to the following:

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s/ Kara F. Sweet  
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