

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

| | | |
|---------------------------|---|------------------|
| ERIC H. HOLDER, JR., | : | |
| ATTORNEY GENERAL OF THE | : | |
| UNITED STATES OF AMERICA, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| DAVID HAMILTON, | : | No. 3:10CV-759-C |
| | : | |
| Defendant. | : | |

AMENDED COMPLAINT

Eric H. Holder, Jr., Attorney General of the United States of America (the "United States Attorney General"), by the undersigned attorneys, asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), enacted into law May 26, 1994, as follows:

1. In bringing this action, the United States Attorney General has reasonable cause to believe: (1) Defendant, David Hamilton, has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured, intimidated and interfered with by Defendant's conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States Attorney General has standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

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4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (b)(2), in that all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. Defendant, David Hamilton, has been a regular anti-abortion protester at the EWM Women's Surgical Center, located at 138 West Market Street in Louisville, Kentucky.

FACTUAL BACKGROUND

6. The EMW Women's Surgical Center provides women's reproductive healthcare services.

7. Defendant has regularly engaged in anti-abortion protest activity outside the EMW Women's Surgical Center.

8. On January 30, 2010, Defendant grabbed and pushed a volunteer clinic escort while that volunteer was escorting a patient into the EMW Women's Surgical Center.

9. Defendant attempted to, and did, intimidate and interfere with persons attempting to obtain and provide reproductive health services from the EMW Women's Surgical Center.

CAUSE OF ACTION UNDER 18 U.S.C. § 248

10. The United States incorporates herein the averments of paragraphs 1 through 9 hereof.

11. Defendant's conduct as described in paragraphs 8 through 9 hereof constitute force which intimidated and interfered with persons seeking to obtain and provide reproductive health services.

12. On information and belief, unless Defendant is restrained by this Court, Defendant

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will continue to engage in the illegal conduct averred herein.

13. The United States Attorney General is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

14. The United States Attorney General is further authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain statutory compensatory damages on behalf of persons aggrieved by Defendant's actions in violation of FACE.

15. The United States Attorney General is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to assess a civil penalty against a respondent no greater than \$15,000.00 for a first violation other than a nonviolent physical obstruction.

WHEREFORE, the United States Attorney General respectfully requests judgment in his favor and against Defendant, David Hamilton, in the form of:

- A. An Order permanently prohibiting Defendant, David Hamilton, from approaching within 8 feet of another person obtaining or providing reproductive health services (including, but not limited to, volunteer "escorts"), unless such person consents, within a radius of 100 feet from any entrance to the EMW Women's Surgical Center;
- B. An Order permanently prohibiting Defendant, David Hamilton, and his representatives, agents, employees and any others acting in concert or participation with him, from violating the Freedom of Access to Clinic Entrances Act; and

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- C. Statutory compensatory damages to the victim of Defendant David Hamilton's activities in violation of FACE on January 30, 2010, as averred in paragraphs 8 and 9 above. The United States seeks statutory compensatory damages in the amount of \$5,000.
- D. A civil penalty assessment in the amount of \$15,000.00.

Respectfully submitted,

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Civil Rights Division

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s/Aaron Fleisher
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amended Complaint was filed electronically on this 27th day of April, 2011, with the Clerk of Court using the CM/ECF System, which will provide notice of such filing to all registered parties.

s/Aaron Fleisher
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