Liberty Tree

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# DOJ deFACEs LIFE's defenders ...

## Part I: FACE Act history is a case study in abuse of congressional authority

In 1994, with Bill Clinton, Janet Reno, and the Democrats in power, Congress passed the "make criminals out of people who try to keep mothers from murdering their own babies in the womb" act. The actual name Congress gave this act was the "Freedom of Access to Clinic Entrances" or FACE, Act.[1] At that time, the belief that *Roe v. Wade*, 410 U.S. 113 (1973), had enshrined abortion as a "right," because some judges sitting on the Supreme Court said so, was rampant among all those who seek to destroy humankind. And if abortion was a "right," then those who "interfered" with that right should be thrown into prison, capiche?

But in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. ___ (2022), the Supreme Court reversed the Roe v. Wade decision and declared that abortion had never been considered a right in the history of common law. In a rage, the imposter Biden regime — now making abortion its number one election issue — has begun using the FACE Act to arrest prolifers for exercising their right to free speech and religion.

Does the U.S. Constitution or federal law give the misnamed Department of Justice (DOJ) authority to so intrude into the States and arrest their citizens for actions concerning abortion, health care, or religious worship? Let's look at the law.

### Pro-Life Prisoners of the FACE Act


Some of the faces of peaceful pro-life activists who were singing hymns in front of an abortion clinic in Tennessee in 2021, and have now been arrested by FBI agents on charges of violating the FACE Act. It is the FBI, and not these political prisoners, who are violating the constitution and laws of the United States.

### How the FACE Act came about

Following *Roe v. Wade*, beginning in 1986, Operation Rescue, a movement practicing 'civil disobedience' by sit-ins in front of abortuaries, began to demonstrate against abortion providers. The Supreme Court described these actions as trespassing on and obstructing "general access" to the premises of abortion clinics in *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993).

In April of 1991, Rep. Mel Levine introduced H.R. 1703, and Sen. Alan Cranston[2] introduced S. 798, two bills entitled the "Freedom of Access to Clinic Entrances Act of 1991," to amend United States Code, Title 18, to make it a federal crime to blockade a "medical facility":

> Sec. 248. Interference with access to or egress from a medical facility
> (a) Whoever ... *intentionally prevents an individual from entering or exiting that medical facility* by physically--
> (1) detaining the individual; or
> (2) obstructing, impeding, or hindering the individual's passage, shall be fined under this title or imprisoned not more than 3 years, or both. [3]

This bill did not advance. But Operation Rescue stepped up its efforts in 1991, recruiting thousands of people to Wichita, Kansas to demonstrate against George Tiller's Women's Health Care Services Clinic, in a "Summer of Mercy" blockade, and then again with several hundred protestors in Buffalo, New York, in 1992's "Spring of Life."

### The Bray decision and its effect

In late 1989, nine abortuaries and five abortion organizations sued Operation

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1. P.L. 103-259 (May 26, 1994), codified at 18 U.S.C. § 248
2. Globalist president of World Federalist Assn. in 1948; famously corrupt Keating Five member.
3. All emphases added, unless otherwise noted.

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Rescue members in federal court, claiming that the Operation Rescue members were in violation of 42 U.S.C. § 1985(3), which forbids two or more to:

> conspire ... on the highway or the premises of another, for the purpose of depriving ... any person or class of persons of the equal protection of the laws ... [and] do ... any act ... whereby another is injured in his person or property, or deprived of having and exercising any right of privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages ... against any one or more of the conspirators.

The court permanently enjoined Operation Rescue and its members from physically blockading abortuaries in Northern Virgina. It reasoned that "women seeking abortion" were a gender-based class, and thus protected, and that Operation Rescue's actions deprived women of their right to travel interstate to obtain abortions. Despite the absurdity of this — Operation Rescue did not prevent women from travelling at all! — the Fourth Circuit upheld it, so the Supreme Court took the case. In *Bray v. Alexandria Women's Health Clinic*, Justice Scalia explained that because the prolife conspirators intended to be a "physical intervention 'between abortionists and the innocent victions,' and that [they are committed to] stopping the practice of abortion and reversing its legalization,"[4] no animus was present against the class of women in general. Further, abortion is not an "irrational object of disfavor"; there are "common and respectable reason for opposing it, other than hatred of ... women as a class." Finally, in order for the protestors to have interfered with the interstate travel rights of women seeking abortion, they would have had to conspire to impede or prevent the *right to travel*, something they did not aim for. [5]

Note that Operation Rescue was not accused of preventing women from exercising any *right* to abortion, just their *right to interstate travel.*

After *Bray*, Sen. Ted Kennedy and Rep. Chuck Shumer immediately reintroduced the FACE Act, co-sponsored by many other rabid abortion promoters. The new House version, H.R. 796, stated that its purpose was to "ensure freedom of access to reproductive services," and provided punishment for anyone who "by force, threat of force, or physical obstruction, intentionally injures, intimidates, or interferes with any person, or attempts to do so, because that person or any other person or class of persons is obtaining or providing reproductive health services." The bill also criminalized intentionally damaging or destroying the property of any facility that offered "reproductive health services." This was defined as "medical, surgical, counselling or referral services relating to the human reproductive system." This includes, of course, pregnancy clinics, and even clergy or counselors who counsel for or against anything that affects the reproductive system (*e.g.,* transgender surgery or hormone drugs).

The bill introduced by Kennedy, S. 636, however, while utilizing the same threat and force language as H.R. 796, stated such was penalizable when pursued "because that person is or has been ... obtaining abortion services [or] lawfully aiding another person to obtain abortion services." The bill further penalized destroying the property of a medical facility only if it "provides abortion services."

## The proposed "findings" of Congress

In the Senate bill, a section entitled "Congressional statement of findings and purpose" detailed the alleged threats posed to women seeking abortions — and abortion facilities — by "violence and obstruction" offered by prolife groups. It said State and local law enforcement were "overwhelm[ed]" by prolife tactics, and that prolifers' conduct:

> ... operates to infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional, and burdens interstate commerce, including by interfering with business activities of medical clinics involved in interstate commerce and by forcing women to travel from States where their access to reproductive health services is obstructed to other States; ...

This "finding" is nothing more than a desperate search for constitutional authority to criminalize actions already under State jurisdiction. First, it implicitly claims there is a constitutional right to abortion. Second, it claims that abortion services, which are confined to a specific physical location, are nevertheless involved in interstate commerce: an absurd proposition, but then, so typical of congressional utterances. Finally, it attempts to bring in the "right to travel" by claiming women are *forced* by prolife actions to travel to other states! These lame "findings" were augmented by an explicit statement that the bill was necessary because of the *Bray* decision, in which "the Court denied a remedy under [42 U.S.C. § 1985(3)] to persons injured by the obstruction of access to abortion services ... legislation is necessary to prohibit [such obstruction]." Note that the intent is not to prohibit injury to life, limb, or property, but to discourage protestors from *assembling* in front of abortuaries.

4. 506 U.S. 363, 270 (1993).
5. *Id.*, at 275.

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The proposed findings disappeared from the final law, but appeared in the Senate report outlining the sponsors' intent. One additional finding, that the bill could be established "without abridging the exercise of any rights guaranteed under the first Amendment to the Constitution," shows that the writers knew the First Amendment was an obstacle to the criminalization of abortion protestors. Since that was so, they had to frame their bill in terms of threats and force used to keep women from exercising another (supposed) right.

Recall that the Tenth Amendment reserves all powers not delegated to the federal government by the Constitution to the States or to the people. This includes the power to criminalize actions which harm others or their property. States already have the power to punish for trespassing, threatening or injuring others, or damaging property. Nothing in the Constitution of the united States authorizes the federales to take over these functions.

## JOIN US NOVEMBER 19 FOR SAPF'S ANNUAL THANKSGIVING CELEBRATION!


**3:30 PM at 5 S. Center St. #1100, Westminster, Md.**

Please bring a covered dish; the Fellowship will supply the turkey. Call 410-857-4441 for details.

### A useless nod in the direction of the Constitution

By the time S. 636 and H.R. 796 were enacted into law, primarily following the Senate version, the D.C. criminals had glossed the measure with a constitutional veneer. They removed the word "abortion" entirely, substituted the phrase "reproductive health services" from H.R. 796, and added the words "including services relating to pregnancy or the termination of a pregnancy." 18 U.S.C. § 248 (d)(5). So the law covers threatening or injuring persons at pregnancy clinics as well. Doesn't that just seem more "fair"? Both those for and against abortion are protected! (And presumably, those for or against transgender surgery.) And yet, the constitution authorizes none of this.

The FACE Act (FACEA) makes a criminal of "Whoever — by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been":

> [(a)(1)] "obtaining or providing reproductive health services." ...
>
> [(a)(2)] "lawfully exercising or seeking exercise the First Amendment right of religious freedom at a place of religious worship."

Also: "Whoever — [(a)(3)] intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship."

Thus, to make it appear like Congress cares about the right to assemble, and religious worship (equated here with a right to have an abortion!!) too, the D.C. criminals pretended to protect property lying within a State, so long as it serves as a place of worship, an abortuary, or a pregnancy center. As some commentators have noted, Congress most likely included the "place of religious worship" to stave off any challenges that the law discriminates against free exercise of speech and religion.[6]

### Terrorizing the peaceful after Dobbs

Since FACEA was passed, the Department of Justice has initiated 101 "cases" under it as of May of 2022.[7] This is an average of four a year; but none at all involve blockades or damage to places of religious worship or pregnancy centers.[8]

Since the overturn of *Roe v. Wade* in *Dobbs v.*

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6. *See* Michael Stokes Paulsen & Michael W. McConnell, *The Doubtful Constitutionality of the Clinic Access Bill* , 1 Va. J. Soc. Pol'y & L. 261, 287 (1994).
7. https://www.jacksonville.com/story/news/2022/05/09/abortions-last-stand-post-roe-future-already-happening-florida/9680312002/
8 See also Letter from Asst. Atty. General Peter J. Kadzik to Senators Ted Cruz and Mike Lee, at 4-5 (June 29, 2016), https://www.cruz.senate.gov/imo/media/doc/Letters/20160927_FACEActResponse.pdf.

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*Jackson*, however, the Imposter's pro-death DOJ has struck hard at prolife protestors, arresting them in several states. On March 30, 2022, nine defendants were announced as indicted for federal rights conspiracy and FACE Act offenses for allegedly blockading a Washington D.C. abortuary in October 2020.

On September 23, 2022, prolife activist Mark Houck was arrested for allegedly assaulting a 72-year -old "volunteer escort" at a Planned Parenthood abortuary in Philadelphia. Notably, law enforcement in Pennsylvania investigated the same incident, and did not bring any charges.

On September 29, 2022, the DOJ charged a priest for allegedly fastening chains and locks to a Planned Parenthood entrance in Hempstead, New York, and lying down in front of the gate.

On October 5, 2022, the DOJ announced a federal indictment of eleven prolifers who took part in a "rescue" at the "Carafem" abortuary in March of 2021 (now closed) in the Nashville area. A recording of the protest shows pro-lifers peacefully standing and sitting inside a hallway of the building, singing hymns, praying, and refusing to leave.[9]

## FACE Act is Congressional anarchy

Persons indicted under FACEA are subject to, if convicted, up to a year in prison along with a 10,000-frn fine (much more if convicted of an additional "conspiracy" charge). Lawyers advocating for prolife protestors have argued in virtually all federal circuits that FACEA is unconstitutional; specifically, that Congress has no enumerated power to enact FACEA, which on its face is duplicative of the police power of the States reserved by the Tenth Amendment. In nearly every case, federal judges have unsurprisingly decided the federales have such power, enabling their goons to trespass into the States and take their people into federal prisons.

As we saw earlier, the Senate bill which led to FACEA claimed Congress could criminalize actions related to protests because abortions are related to interstate commerce, and that this "finding" had been removed from the bill. Senate Report No. 103-117, however, contained the commerce rationale:

> Congress has clear constitutional authority to enact [FACEA] under the Commerce Clause, which gives it authority to regulate interstate commerce.
>
> Commerce Clause authority has been broadly interpreted, and an exercise of it will be sustained if Congress has a *rational basis* for finding that an activity *affects interstate commerce*, and it [] acts rationally in addressing the activity. Under the Commerce Clause, in conjunction with the Necessary and Proper Clause, Congress has authority *to regulate activity that is purely local* if that activity has an effect on interstate commerce. Further, once Congress finds that a class of activities affects interstate commerce, Congress may regulate all activities within that class, even if any of those activities, taken individually, *has no demonstrable effect on interstate commerce*. It has also been considered important to Commerce Clause analysis that the problem Congress is addressing is national in scope and exceeds the ability of a single state or local jurisdiction to solve. Under these principles, [FACEA] falls easily within the commerce power.

According to Congress, then, regulating interstate commerce means they can control local and individual actions of all kinds; the Commerce Clause being the one ring of power to rule them all!!

The Senate report goes on to state that abortuary personnel often travel to work from other States, or work in more than one State, and that abortuaries purchase "medicine, medical supplies, surgical instruments and other necessary medical products, often from other States; they employ staff; they own and lease office space; they generate income. In short, the Committee finds that *they operate within the stream of interstate commerce*. In addition, many of the patients who seek services from these facilities engage in interstate commerce by traveling from one state to obtain services in another...."

Further, says the report, the activites punished by FACEA have "a negative effect on interstate commerce ... clinics have been closed because of blockades and sabotage and have been rendered unable to provide services. Abortion providers have been intimidated and frightened into ceasing to perform abortions ... [this] results in the provision of fewer abortions and less interstate movement of people and goods."

Apart from the demonic assessment by the D.C. criminals that an *increased*, rather than a decreased, killing of babies is good for business, it is clear that Congress seditiously redefines the power to regulate commerce between the States to be the power to control nearly all economic and noneconomic activity *within* the States. And the judicial criminals *provided* Congress with that ludicrous rationale.

Are we to believe that when the original States ratified the Constitution of the united States, or others joined the union, they thought all this power was actually given to the federal government in the form of interstate commerce? If so, then they agreed to slavery, not ordered freedom. In the next issue, we will examine how the courts have upheld FACEA as "constitutional," along with the dissenting opinions. We will also examine a legal issue seemingly never raised by defendants in these cases, as well as the implications of the overturning of *Roe v. Wade*. Stay tuned.

9. https://stream.connecttn.com/w/102e8479-ee1e-4158-ba8a-bfa878706d1a