

**Exhibit Number:** 4

---

**This exhibit exceeds front to back 5-page maximum; therefore only a small portion of the exhibit is scanned for your research. The original exhibit is on file at the Montana Historical Society and may be viewed there**



[ [Usenet FAQs](#) | [Search](#) | [Web FAQs](#) | [Documents](#) | [RFC Index](#) ]EXHIBIT 4DATE 1/25324

HB

# Freedom of Access to Clinic Entrances Act (FACE) FAQ

There are reader questions on this  
topic!  
Help others by sharing your  
knowledge

From: eck@panix.com (Mark Eckenwiler)  
Newsgroups: [misc.legal](#), [alt.politics.clinton](#), [talk.abortion](#),  
[alt.fan.rush-limbaugh](#)  
Subject: Freedom of Access to Clinic Entrances Act (FACE) FAQ  
Date: 18 Apr 1995 17:56:49 -0400  
Message-ID: <aprfacefaq@panix>  
Reply-To: [eck@panix.com](mailto:eck@panix.com)  
Summary: This article explains the Freedom of Access to Clinic Entrances Act of 1994 (FACE) and provides the full text of the Act along with current information on legal challenges.

Version: 1.3

Archive-name: law/clinic-access

1. What is the Freedom of Access to Clinic Entrances Act (FACE)?
2. When was FACE enacted?
3. What kinds of activity does the statute prohibit?
4. What are the penalties for violating the law?
5. Doesn't FACE violate the First Amendment?
6. Isn't FACE so vague that it violates due process?
7. Isn't it illegal to single out one kind of business for protection?
8. Have the courts ruled on FACE's constitutionality?

Appendix A1. Complete text of the original Act

Appendix A2. Technical amendments of 9/94

Appendix B. Complete text of the U.S. District Court decision in Council for Life Coalition v. Reno, No. 94-0843-IEG (CM) (S.D. Cal. July 6, 1994)

The FACE FAQ is posted around the 10th day of each month. Comments or suggestions are welcome, and should be sent to [eck@panix.com](mailto:eck@panix.com). A current version of the FAQ may always be obtained from <ftp://rtfm.mit.edu/pub/usetnet/news.answers/law/clinic-access>. If you do not have ftp access, send a mail message to [mail-server@rtfm.mit.edu](mailto:mail-server@rtfm.mit.edu) with the line  
send usenet/news.answers/law/clinic-access  
in the body of the message.

Copyright 1994, 1995 by Mark Eckenwiler, except as to Appendices A1, A2, and B (no claim to original U.S. government works). Permission is granted to redistribute this article in its entirety for noncommercial use provided that this copyright notice is not removed or altered. No portion of this work may be sold, either by itself or as part of a larger work, without the express written permission of the author;

this restriction covers all publication media, including (but not limited to) CD-ROM.

The author is an attorney admitted to practice in the State of New York and the Commonwealth of Massachusetts. Against his better judgment, he continues to live and work in New York City.

This FAQ is provided for informational purposes only. The author has neither formed an attorney-client relationship with nor offered legal advice to the reader. For legal advice, consult individually with an attorney admitted to practice in your state.

On the format of this FAQ:

Topic entries in the outline are flagged with "\*\*\*" at the left margin; to page through the topics one by one, search repeatedly for "\*\*\*".

-----

\*\* 1. What is the Freedom of Access to Clinic Entrances Act (FACE)?

The Freedom of Access to Clinic Entrances Act -- often abbreviated as FACE or FACEA -- is a United States law protecting reproductive health service facilities and their staff and patients from violent threats, assault, vandalism, and blockade. Despite its name, FACE also provides the same protection to churches and other places of worship, and to their congregants as well.

\*\* 2. When was FACE enacted?

After a House-Senate conference committee resolved the differences between the preliminary versions of FACE passed in the two chambers, the House approved FACE on May 5, 1994 (Cong. Rec. H3116-3135). By a vote of 69-30, the Senate passed the measure one week later (5/12/94 Cong. Rec. S5595-5606). President Clinton signed the bill into law on May 26, 1994 (P.L. 103-259, 108 Stat. 694), and it took effect immediately.

The 1994 federal crime bill (P.L. 103-322, enacted 9/13/94) made minor technical changes to FACE. See Appendix A2.

\*\* 3. What kinds of activity does the statute prohibit?

FACE makes it illegal to use force, the threat of force, or "physical obstruction" intentionally to

- a) "injure"
- b) "intimidate"
- c) "interfere with," or
- d) attempt to injure/intimidate/interfere with

someone because that person is engaged in "obtaining or providing reproductive health services," as those terms are defined in the statute (see below).

The same prohibition applies to these same acts committed against someone "lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship."

Finally, the law punishes anyone who intentionally damages or destroys a facility because it provides reproductive health services, or who "intentionally damages or destroys the property of a place of religious worship."

To clarify the meaning of the law and protect against a challenge that the law is unconstitutionally vague, Congress included explicit definitions for several of the key terms used above:

"The term 'interfere with' means to restrict a person's freedom of movement."

"The term 'intimidate' means to place a person in reasonable apprehension of bodily harm to him- or herself or to another."

"The term 'physical obstruction' means rendering impassable ingress to or egress from a facility that provides reproductive health services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous."

"The term 'reproductive health services' means reproductive health 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."

[The full text of the Act, which created a new statute codified at 18 U.S.C. sec. 248, is reproduced in Appendix A1 below. For information on how to locate and research federal law, see the Legal Research FAQ, posted monthly in news.answers, misc.legal, and other relevant newsgroups.]

Note that the definition of "reproductive health services" covers numerous facilities besides abortion clinics. Specifically, the law's coverage of counselling/referral services "relating to pregnancy" makes clear that FACE also protects pro-life counselling centers from attack.

Note also that FACE includes a "parental exemption" for activity directed solely at a minor by a parent or guardian. For example, FACE does not bar a parent from interfering with (or obstructing) a child's efforts to obtain an abortion, to obtain counselling concerning contraceptives, or to attend a particular place of worship. This exemption does not apply to conduct directed at anyone other than the minor (and therefore does not exempt threats directed at a clinic worker providing counselling to the minor); likewise, it does not immunize a parent/guardian from state laws that may limit such conduct.

\*\* 4. What are the penalties for violating the law?

FACE provides for both civil remedies and criminal penalties.

The criminal penalties vary according to the severity of the offense and the defendant's prior record of FACE violations. Generally, a first-time offender cannot be sentenced to more than 1 year in prison and a \$100,000 fine. For a second or subsequent violation after a prior FACE conviction, a defendant may be imprisoned for no more than 3 years and fined \$250,000. See 18 U.S.C. secs. 3559 & 3571 (setting forth

applicable fines for different categories of federal offenses).

However, more lenient limits apply in cases of exclusively nonviolent physical obstruction. A first-time "blockader" faces no more than 6 months and a \$10,000 fine; for subsequent violations, the maximum penalty is 18 months and \$25,000.

On the other hand, if the offense results in bodily injury, the maximum sentence increases to 10 years, regardless of whether it is a first offense. If death results from the offense, the maximum sentence is life imprisonment.

Note that all of the above figures represent \*maximum\* sentences. (FACE imposes no mandatory minimum sentences.) Offenders are sentenced according to the separate United States Sentencing Guidelines, which require a sentencing calculation based on the severity of the offense and the defendant's prior convictions (whether for FACE violations or for other crimes). Except for career criminals with lengthy records, the Guidelines seldom impose a sentence near the statutory maximum. A first-time nonviolent FACE offender with little or no criminal past would normally be eligible for home detention, "supervised release" (probation), or other alternatives to full incarceration.

Civil remedies:

A person injured by a FACE violation may bring a civil suit against the offender. The statute allows a private plaintiff to obtain temporary, preliminary, or permanent injunctive relief, and compensatory and punitive damages, and fees for attorneys. In lieu of proving actual compensatory damages, a plaintiff may elect to recover \$5,000 for each violation proven.

The U.S. Attorney General (or any state attorney general) may also bring suit in federal court on behalf of third parties injured by FACE violations. In such actions, the court may award the injured parties the types of remedy listed above; moreover, the court may impose civil fines on defendants according to the following schedule:

- first offense, nonviolent physical obstruction: \$10,000
- other first offenses: \$15,000
- subsequent offenses for nonviolent physical obstruction: \$15,000
- other subsequent offenses: \$25,000

Finally, note that FACE does not limit the availability of civil remedies or criminal penalties allowed under state law for the same conduct.

\*\* 5. Doesn't FACE violate the First Amendment?

No. FACE does not infringe the free speech rights of anti-abortion protesters. The law covers only unprotected conduct -- assault, trespass, and vandalism -- that is already the subject of criminal penalties in most states. Clinic protesters remain free to pray, sing hymns, carry signs, and distribute pro-life literature outside clinics.

Note also that FACE does not discriminate on the basis of viewpoint. The law provides the same protection to pro-life counselling centers as to abortion clinics. Likewise, it applies to \*anyone\* who commits the prohibited acts, regardless of the actor's motives; a disgruntled ex-

employee who firebombs a clinic or assaults clinic staff in revenge is chargeable under FACE.

For information on relevant court rulings, see section 8 and Appendix B below.

\*\* 6. Isn't FACE so vague that it violates due process?

No. Under the Supreme Court's "vagueness" doctrine, a criminal law does not violate the notice requirement of the Constitution's Due Process guarantees if a person of ordinary intelligence can determine whether or not his conduct violates the statute. Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972).

The text of FACE satisfies this standard; it makes clear the meaning of such terms as "physical obstruction" and "intimidate" by providing specific definitions.

For information on relevant court rulings, see section 8 and Appendix B below.

\*\* 7. Isn't it illegal to single out one kind of business for protection?

No. Congress (and state legislatures as well) have the power to address specific problems with narrowly tailored legislation. This includes the power to regulate (or offer protection to) an individual class of businesses.

Thus, federal law explicitly makes it a felony to rob a bank or S&L (18 U.S.C. sec. 2113), but imposes no corresponding penalty for robbing a convenience store or racetrack. Likewise, a 1992 federal law passed in response to animal-rights vandalism makes it a felony to damage the property of an "animal enterprise" (i.e., research laboratory, livestock operation, zoo, aquarium, circus, or rodeo). See 18 U.S.C. sec. 43.

\*\* 8. Have the courts ruled on FACE's constitutionality?

As of mid-April 1995, eight different federal courts have ruled in response to broad-based constitutional challenges to FACE invoking (among other things) the First and Fifth Amendments. Seven courts -- six district courts and one circuit court (the Fourth Circuit) -- have rejected the challenges in their entirety and held that FACE is constitutional; a lone district court in Wisconsin held unconstitutional the Act's prohibition on nonviolent physical obstruction (not on First Amendment grounds, but on Congress's purported lack of authority to enact the legislation).

Following is a list of the decisions to date; other cases are pending in various federal courts across the U.S.

Upholding the statute:

=====

American Life League v. Reno, No. 94-1869, United States Court of Appeals, Fourth Circuit, Feb. 13, 1995. (Judges Michael, Hall, & Chapman.) Reported at 47 F.3d 642 (1995).

# United States v. Brock, No. 94-CR-86 (JPS), United States District Court, Eastern District of Wisconsin, September 23, 1994. (District Judge Stadtmueller, appointed in 1987 by President Reagan.)

- Reily v. Reno, No. CIV-94-1058-PHX-RGS, United States District Court, District of Arizona, August 12, 1994. (District Judge Strand, appointed in 1985 by President Reagan.)

Cook v. Reno, No. Civ. A. 94-0980, United States District Court, Western District of Louisiana, August 5, 1994. (District Judge Little, appointed in 1984 by President Reagan.)

+ Cheffer v. Reno, No. 94-0611-CIV-ORL-18, United States District Court, Middle District of Florida, July 26, 1994. (District Judge Sharp, appointed in 1983 by President Reagan.)

Council for Life Coalition v. Reno, No. 94-0843-IEG (CM), United States District Court, Southern District of California, July 6, 1994 (reported at 856 F. Supp. 1422). (District Judge Gonzalez, appointed in 1992 by President Bush.) [attached as Appendix B below]

! American Life League v. United States, No. CIV. A. 94-700-A, United States District Court, Eastern District of Virginia, June 16, 1994 (reported at 855 F. Supp. 137). (District Judge Brinkema, appointed in 1993 by President Clinton; formerly a U.S. Magistrate Judge appointed under President Reagan, 1985-1993.)

Invalidating the statute in part:  
=====

# United States v. Wilson, No. 94-CR-140, United States District Court, Eastern District of Wisconsin, March 16, 1995. (District Judge Randa.)

+ Indicates that appeal of this decision has been filed

- Indicates that appeal has lapsed

! Indicates decision affirmed on appeal

# Indicates conflict with another decision in the same court

Despite what you may have heard, the Supreme Court has not yet ruled on FACE's constitutionality. In the Madsen case handed down in June 1994 -- a case involving various "buffer zones" imposed at a Florida abortion clinic -- the Supreme Court considered only the constitutionality of a special injunction (i.e., court order) requiring protesters to refrain from certain activities within a 300-foot perimeter (and to remain entirely outside a 36-foot zone around the clinic). That injunction was not issued under FACE. Madsen v. Women's Health Ctr., 114 S. Ct. 2516 (June 30, 1994).

In Madsen, the Supreme Court upheld (by a 6-3 vote) the 36-foot exclusion zone, which had been imposed by a lower court only after a narrower injunction was repeatedly violated by protesters. The Court also upheld an "excessive noise" prohibition. At the same time, however, the Court struck down a 300-foot zone in which protesters were barred from approaching staff or patients without their consent; a ban on signs or images visible from the clinic was also invalidated. Chief Justice Rehnquist wrote for the majority, joined by Justices Blackmun, O'Connor, Stevens, Souter, and Ginsburg; Justices Scalia, Kennedy, and