

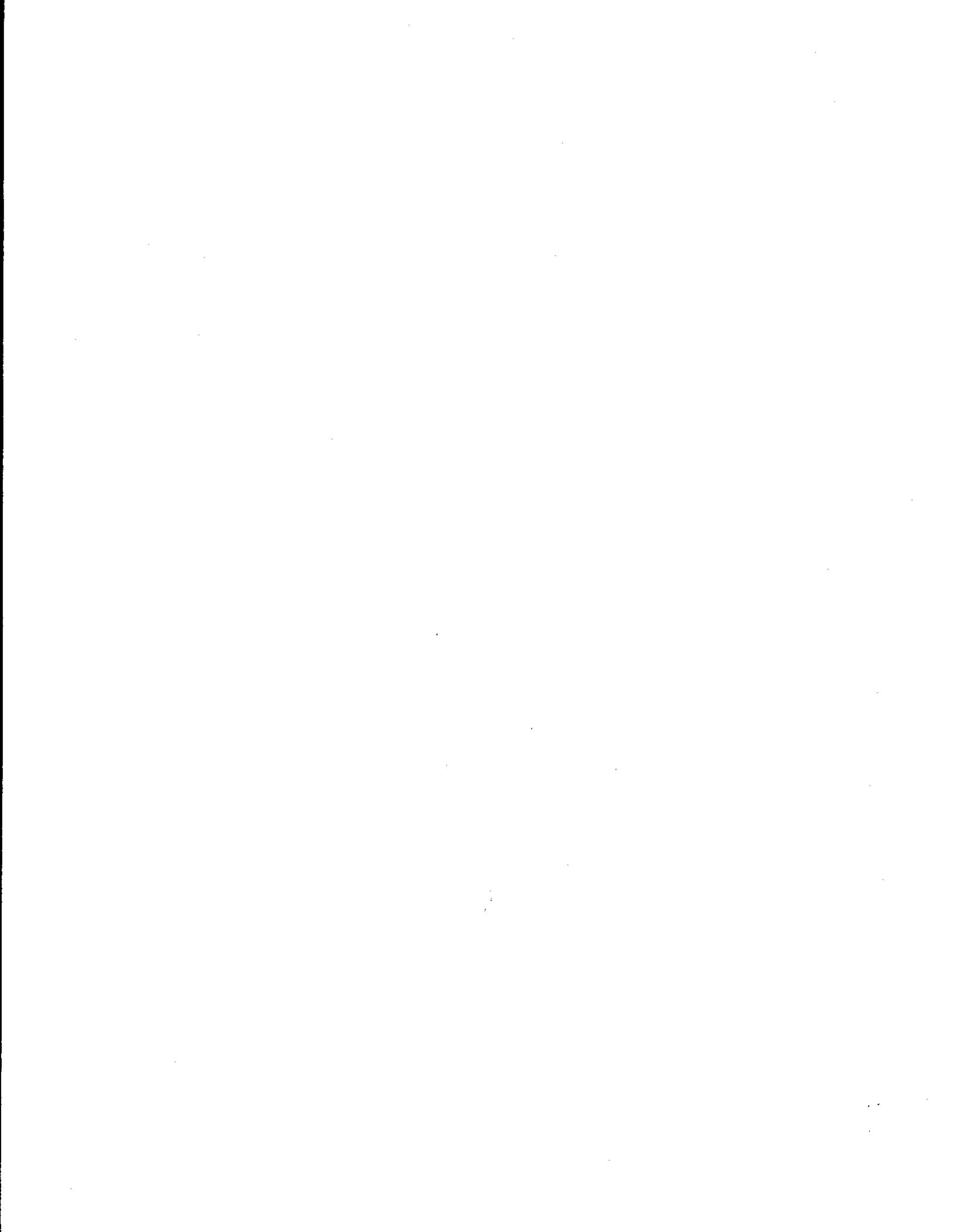
# Montana State Legislature

**Exhibit Number: 19**

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**The following exhibit is several assorted documents that exceeds the 10-page limit therefore it cannot be scanned. A small portion has been scanned to aid in your research for information. The exhibit is on file at the Montana Historical Society and can be viewed there.**

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

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

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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?
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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/usenet/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.

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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 "\*\*\*".

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\*\* 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:

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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

Thomas dissented.

While it does not address FACE directly, Madsen reaches several legal conclusions that strongly suggest FACE will ultimately survive review in the Supreme Court. Most importantly, the majority opinion expressly rejected the argument that the Florida injunction violated the First Amendment by discriminating against a particular viewpoint. See 114 S. Ct. at 2523-24.

The only negative effect Madsen has on FACE is to define the limits of injunctions that judges may constitutionally impose when they grant relief to civil plaintiffs under FACE (or any other statute authorizing injunctive relief). While FACE itself does not automatically create buffer zones around clinics -- contrary to the false claims made by some Usenetters -- its provisions for granting injunctive relief undoubtedly permit judges to order such exclusion zones under appropriate circumstances.

To obtain a copy of the Madsen decision from Cornell's mail server, send email to [liideliver@fatty.law.cornell.edu](mailto:liideliver@fatty.law.cornell.edu) with the following line in the body of the message:

request 93-880

\*\* Appendix A1. Complete text of the original Act

PL 103-259, May 26, 1994, 108 Stat 694

FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT OF 1994

An Act to amend title 18, United States Code, to assure freedom of access to reproductive services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1994".

#### SEC. 2. PURPOSE.

Pursuant to the affirmative power of Congress to enact this legislation under section 8 of article I of the Constitution, as well as under section 5 of the fourteenth amendment to the Constitution, it is the purpose of this Act to protect and promote the public safety and health and activities affecting interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services.

#### SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Chapter 13 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"sec. 248 Freedom of Access to CLINIC ENTRANCES.

"(a) PROHIBITED ACTIVITIES.--Whoever--

"(1) 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, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

"(2) 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 lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

"(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,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

"(b) PENALTIES.--Whoever violates this section shall--

"(1) in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both; and

"(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with this title, or imprisoned not more than 3 years, or both;

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall be not more than six months, or both, for the first offense; and the fine shall be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

"(c) CIVIL REMEDIES.--

"(1) RIGHT OF ACTION.--

"(A) IN GENERAL.--Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services, and such an action may be brought under subsection (a)(2) only by a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship or by the entity that owns or operates such place of religious worship.

"(B) RELIEF.--In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as

well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

"(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.--

"(A) IN GENERAL.--If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, the Attorney General may commence a civil action in any appropriate United States District Court.

"(B) RELIEF.--In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent--

"(i) in an amount not exceeding \$10,000 for a nonviolent physical obstruction and \$15,000 for other first violations; and

"(ii) in an amount not exceeding \$15,000 for a nonviolent physical obstruction and \$25,000 for any other subsequent violation.

"(3) ACTIONS BY STATE ATTORNEYS GENERAL.--

"(A) IN GENERAL.--If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, such Attorney General may commence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

"(B) RELIEF.--In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

"(d) RULES OF CONSTRUCTION.--Nothing in this section shall be construed--

"(1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

"(2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, occurring outside a facility, regardless of the point of view expressed, or to limit any existing legal remedies for such interference;

"(3) to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this section, or to preempt State or local laws that may provide such penalties or remedies; or

"(4) to interfere with the enforcement of State or local laws regulating the performance of abortions or other reproductive health services.

"(e) DEFINITIONS.--As used in this section:

"(1) FACILITY.--The term 'facility' includes a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility

is located.

"(2) INTERFERE WITH.--The term 'interfere with' means to restrict a person's freedom of movement.

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

"(4) PHYSICAL OBSTRUCTION.--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.

"(5) REPRODUCTIVE HEALTH SERVICES.--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.

"(6) STATE.--The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

#### SEC. 4. CLERICAL AMENDMENT.

The table of sections at the beginning of chapter 13 of title 18, United States Code, is amended by adding at the end the following new item:

"248. Blocking access to reproductive health services."

#### SEC. 5. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any other person or circumstance shall not be affected thereby.

#### SEC. 6. EFFECTIVE DATE.

This Act takes effect on the date of the enactment of this Act, and shall apply only with respect to conduct occurring on or after such date.

Approved May 26, 1994.

\*\* Appendix A2. Technical amendments of 9/94

[From P.L. 103-322:]

Section 330023. TECHNICAL CORRECTION RELATING TO SECTION 248  
OF TITLE 18, UNITED STATES CODE

(a) IN GENERAL.--Chapter 13 of title 18, United States Code, is amended--

(1) in the chapter analysis so that the item relating to section 248 reads as follows: