



Written by [Michael Tennant](#) on April 23, 2013

Obama's War on the Pro-life Movement

Much ink, both virtual and physical, has been spilled over the Obama administration's decision to force employers to offer contraceptive coverage as part of their employee health insurance plans. The administration's callous disregard for the religious convictions of many employers — including those who, while not opposed to birth control per se, do not approve of contraceptives that can cause abortions — has rightly drawn condemnation from many quarters. The ruling is emblematic of President Barack Obama's status as "the most pro-abortion advocate to ever hold the nation's top executive office," in the words of the pro-life Susan B. Anthony List.



But while the contraceptive mandate has garnered most of the attention, the administration has also been quietly waging war on the pro-life movement through legal action and intimidation. Although it has achieved few clear-cut victories in court, the mere fact that the full force of the U.S. Department of Justice (DOJ) is being brought to bear against those who stand up for life could inhibit many from continuing to defend the unborn in public.

The FACE of Pro-life Suppression

The administration's primary weapon in its assault on pro-lifers is the Freedom of Access to Clinic Entrances (FACE) Act. Signed into law by President Bill Clinton in 1994, the act prohibits (1) any physical interference with or intimidation of individuals entering or exiting an abortion clinic and (2) violence or threats of violence against clinic staff, volunteers, or patients. It was passed in the wake of a number of acts of violence against abortion clinics and doctors — acts that were already illegal under state penal codes and were prosecuted as such. The law, therefore, was both unnecessary and — because it exceeds the federal government's enumerated powers — unconstitutional.

It also singles out abortion clinics for preferential treatment under federal law. One is free to try to dissuade others from entering, say, a bar or a casino, but one dare not press his case too strongly with a woman seeking to terminate her pregnancy or he risks having the DOJ haul him into court for violating the FACE Act — despite the fact that the law expressly upholds individuals' rights to free speech "regardless of the point of view expressed."

From the beginning, the FACE Act "was an intimidation tactic," Dana Cody, president and executive director of Life Legal Defense Foundation (LLDF), told *The New American*. "People would go out and engage in free exercise activity, and when they saw that, okay, the consequence is going to be pretty severe here because of the penalties, many people stopped going out. So it really chilled free speech."

Although the FACE Act was employed somewhat aggressively under Clinton, during President George W. Bush's eight years in office the DOJ brought only a single FACE case. In just the first four years of Obama's presidency, by contrast, it has brought nine FACE cases.



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“The Obama administration has a mechanism in the FACE Act, and they’re using it to further their pro-abortion agenda,” Cody averred. “They’re in the pockets of Planned Parenthood and other pro-abortion forces that helped get Obama elected. So to me it’s political pandering, it’s payback, and FACE is the mechanism to do it.”

Likewise, Operation Rescue president Troy Newman told NPR in 2011 that the Obama administration is using the FACE Act against peaceful abortion opponents as “a political tool to shut them up, shut them down and make them go away.”

Consider the case of Richard Retta, an octogenarian father of seven and grandfather of 11 who was charged under the FACE Act with being a “hazardous physical obstruction” at a Planned Parenthood clinic located just two blocks from the White House.

Retta is credited with helping hundreds of women choose life, which, of course, has cost the clinic a pretty penny. Thus, when the opportunity to be rid of this expensive pest presented itself, the clinic, with the assistance of its willing allies in the Obama administration, seized it.

That opportunity arrived on January 8, 2012, when, according to a *Lifeline* article by LLDF senior staff counsel Allison Aranda, “a young girl left the clinic and approached Retta for help. The escorts were so outraged that they grabbed her arm and attempted to drag her back inside the clinic so that she would not be influenced by Retta. Retta quickly intervened and pled with the girl to not let the escorts force her to have an abortion.”

The DOJ claimed that Retta physically prevented the girl from reentering the clinic — the humane thing to do under the circumstances, though Retta denies having done so — thereby violating the FACE Act. It wanted Retta to pay \$10,000 in civil penalties and \$15,000 in damages to his alleged victims. It also sought an injunction to keep him away from the clinic.

In a settlement reached in January, the government got its injunction, forcing Retta to remain outside a “buffer zone” around the clinic gate, but it did not get any money or an admission of liability out of him. According to his attorney, Edward White, senior counsel of the American Center for Law and Justice, “Retta continues to do his important pro-life work outside the Planned Parenthood of Metropolitan Washington Clinic with success” — just from a slight distance.

Losing FACE

Other pro-life advocates have been similarly charged, and their cases have been resolved even more favorably.

“Sidewalk counselor” Kenneth Scott was charged under the FACE Act with physically obstructing access to a Colorado Planned Parenthood clinic because he would wait near the entrance to the parking lot and attempt to speak with and hand pro-life literature to those entering the lot. The government sought \$10,000 in civil penalties and an injunction to keep him away from the clinic.

The DOJ tried to obtain a preliminary injunction against Scott but was rebuffed by U.S. District Judge Philip Brimmer, who ruled in January 2012 that the government had failed to prove that it was likely to prevail at trial. Two months later the government came around to Brimmer’s way of thinking and dropped the case.

In January 2010, David Hamilton was handing literature to women entering a Louisville, Kentucky, abortion clinic. Clinic volunteers locked arms to block him, and Hamilton pushed the arm of one escort out of the way so he could give literature to a woman. For this he was charged with disorderly conduct



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for “pushing and shoving clinic escorts.”

The misdemeanor charge was dismissed in May 2010 after Hamilton completed eight hours of community service. Two months later he moved to Houston, Texas, thinking the scuffle was behind him.

However, over a year after the incident — which, according to LifeNews.com, “was such a minor offense that Anne Ahola, the director of the abortion business, told the Louisville [*Courier-Journal*] she doesn’t remember it” — the DOJ tracked him down and charged him with violating the FACE Act. The department tried to take Hamilton for \$20,000 (\$15,000 in civil penalties and \$5,000 in damages) and slap an injunction on him so that he could not approach the clinic — something he was unlikely to do now that he lived 800 miles away.

The case was settled in January 2013. Hamilton agreed to pay \$2,500 to “pro-abortion protestor Jane Fitts, who has no association with the abortion clinic” and who “testified in a deposition [that the payment] was unwarranted,” reported LifeNews.com.

LLDF, which funded Hamilton’s defense, issued a statement saying: “David had to make a difficult decision, but the settlement once again thwarts the plan of the Obama administration to get an injunction against pro-lifers. Faced with an expensive trial and travel back from Texas where he now resides, Hamilton decided that paying some nominal amount just to settle the case was appropriate. The case is dismissed and cannot be brought back and there is no injunction and no fine.”

Perhaps the most interesting case is that of Mary Susan Pine, a woman who had an abortion years ago and now does sidewalk counseling outside an abortion clinic in hopes of persuading other women not to make the same mistake she did. The Obama administration charged Pine under the FACE Act with obstructing access to the Presidential Women’s Center (PWC) abortion clinic in West Palm Beach, Florida. Pine was accused of passing in front of a car entering the PWC parking lot, causing the driver to stop, then walking to the side of the car, talking with the driver, and handing him a pamphlet. The car then went on its way.

“But passing in front of a car, talking to the driver from the side of the car and handing a pamphlet is not obstructing access,” observed Timothy Carney of the *Washington Examiner*. “The DOJ, despite carrying on this case for a year and a half, never presented any evidence that Pine obstructed anyone’s access or tried to.”

The evidence might have existed on the clinic’s surveillance tapes; but in keeping with its standard policy, the clinic destroyed the tapes after a few weeks. However, Carney pointed out, “the DOJ had a perfect opportunity to review and preserve them because DOJ officials visited the PWC the day after the ‘incident’ to begin building its case against Susan Pine.” This suggests that the government knew it had no case and figured it was better off bluffing than producing evidence that would surely exonerate Pine.

U.S. District Judge Kenneth Ryskamp saw through the DOJ’s bluff, issuing a summary judgment in Pine’s favor and ordering the department to pay \$120,000 to cover her legal costs. (The government appealed the decision, only to turn around and drop the case within weeks.) In his decision, Ryskamp noted the absence of evidence against Pine, including “any efforts to obtain the identities of ... the alleged victims.”

“The Court is at a loss as to why the Government chose to prosecute this particular case in the first place,” he wrote, though he suggested one possible motive: “The Court can only wonder whether this action was the product of a concerted effort between the Government and the PWC, which began well before the date of the incident at issue, to quell Ms. Pine’s activities rather than to vindicate the rights



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of those allegedly aggrieved by Ms. Pine's conduct."

The Obama-abortion Axis

In fact, the congenial relationship between the Obama administration and the abortion industry extends far beyond West Palm Beach and goes back to the beginning of Obama's first term. In June 2009, the administration convened a meeting of the National Task Force on Violence Against Reproductive Health Care Providers, another Clinton-era sop to the abortion lobby. After that, the DOJ began conducting nationwide FACE Act training sessions for federal and local law enforcement.

Considering that the authors of the resource guide used in the training were the Feminist Majority Foundation, the National Abortion Federation, and the Planned Parenthood Federation of America, there was never any chance that pro-lifers would be given a fair shake. Indeed, throughout the guide abortion opponents are portrayed as crazed "anti-choice individuals" bent on the destruction of "reproductive health clinics and health care providers" by the most violent means possible. One would never know from reading the guide that the vast majority of pro-life activists are peaceful protesters and sidewalk counselors, some of whom, according to Cody, actually adopt children whose mothers choose not to abort them.

The guide recommends filing civil rather than criminal charges under the FACE Act because civil trials require a lower burden of proof and offer abundant opportunities for injunctions and monetary awards. It also suggests that law enforcement "build relationships with [abortion] providers" — which is to say that the cops should be at the abortionists' beck and call. (Such tight relationships can be a boon to clinics, but they can also produce debacles like the Pine case.)

As the examples above demonstrate, the Obama administration has not fared well in bringing FACE actions against pro-lifers. Most of the cases have ended either in dismissal or in far more modest settlements than the administration sought. At best the government has managed to obtain injunctions keeping a handful of protesters away from abortion clinics. Why keep filing these lawsuits when they aren't succeeding?

"Sometimes just the sheer cost of a legal defense is going to make somebody compliant when they know they shouldn't have to be," argued Cody. She believes that part of the reason the administration is losing so many cases is that "they just think it's going to be a slam dunk," and so they file suits without adequate evidence and show up in court less than fully prepared.

The FBI's "Gestapo Tactics"

And what if there's a pro-lifer they want to silence but don't even have enough flimsy evidence to haul him into court? They take the intimidation route.

That is what happened to pro-life activist Andy Moore, a New Zealand native, last summer, as this author reported in *The New American* online:

On July 13 FBI agents appeared at Moore's Dallas, Texas, home and proceeded to question him for more than an hour despite having no evidence that he had committed a crime. According to Moore's mother-in-law, pro-life leader Jill Stanek, the agents asked "totally inappropriate questions clearly aimed at intimidating Andy," including some about his wife, his religion, his reasons for protesting abortion, and other pro-life activists. They questioned him in depth about his relationship with Stanek and her influence on his activism. And they suggested that he'd better watch his step because, as an immigrant who has not yet attained U.S. citizenship, one felony on



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his record could get him deported. “You wouldn’t want to be apart from your wife and newborn,” Stanek reported they said.

Ostensibly the visit was prompted by a few minor complaints about Moore’s style of protesting; more likely, the administration was trying to get to Stanek through Moore. Stanek has been on Obama’s bad side ever since the 2008 presidential campaign, when she publicized his four votes as an Illinois state senator against legislation that would have required doctors to assist babies that survive abortion attempts. (Stanek had observed babies that survived abortions being left to die in a utility room at Christ Hospital in Oak Lawn, Illinois.) Stanek has continued to criticize Obama throughout his administration. It is therefore quite reasonable to suspect that she is the real target of these intimidation tactics.

Shortly after the incident, LLDF sent a letter to the FBI, accusing the government of undertaking “a witch hunt of anyone who is openly critical of the Obama administration” and vowing to expose the FBI’s “Gestapo tactics” and “take immediate action in federal court” if these tactics did not cease. Cody told TNA that the foundation has since filed Freedom of Information Act requests on behalf of Moore and Stanek, though “so far ... we’ve been stonewalled.” She did, however, state that this is the only instance of this type of intimidation of which she is aware.

Of course, the Obama administration now has another four years to dream up new ways of stifling pro-life activism, and Obama won’t have to concern himself with facing voters again. Does that mean the attacks on pro-lifers are likely to increase?

“It’s really difficult to predict,” Cody said. “I think that on so many levels we’re seeing our rights being taken away — Second Amendment rights, healthcare — that my tendency would be to say they will step up prosecutions with FACE. But then part of me says that they’ve really been so unsuccessful maybe they’re finally getting a clue.”

“I don’t think they’ll go away,” she added. “Maybe they’ll be more selective.”

Even selective prosecutions and intimidations, however, can take their toll on a movement. Beijing, after all, doesn’t imprison every Chinese dissident — just enough to ensure the compliance of the rest.

Another four years of assaults on the pro-life movement could convince many activists to put down their picket signs and go home, decimating the movement. Obama and his pals in the abortion industry are undoubtedly hoping they do. It’s up to pro-life activists and legal foundations to make sure they don’t.

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