

Anthrax Threats, Continued Violence Prompt Renewed Attention to Clinic, Client Protection

Violence and threats of violence are nothing new to abortion clinics. Abortion rights advocates were nevertheless unnerved by the two waves of false anthrax threats—unprecedented in their volume and coordination—that reached more than 500 reproductive health clinics and women’s rights organizations around the country in the two months following September 11.

Threatened bioterrorism is a relatively new tactic for antiabortion extremists—one not employed until the late 1990s. In contrast, since the late 1970s, when the National Abortion Federation (NAF) began tracking antiabortion violence, there have been 40 bombings at family planning and abortion clinics, more than 160 arsons and nearly a thousand reported acts of vandalism. The

violence worsened in the 1990s. For the first time, antiabortion extremists began to murder doctors and clinic workers, killing seven and wounding another 13 across the country in a span of nine years. Death threats have also multiplied: NAF reports that from 1977 to 1990, there were 77 reported death threats to clinic employees, whereas between 1991 and 1999, more than 250 were reported. Radical antiabortionists also began dumping butyric acid, a substance that releases a rancid odor, inside and around clinics. According to an annual survey by The Feminist Majority Foundation, one in five clinics experienced severe violence in the year 2000.

Women seeking abortions and other medical services have often had to endure a gauntlet of demonstrators

outside the clinics. While some protesters go no further than to pray, chant or wave posters, many others have engaged in physical violence, such as surrounding patients’ cars to keep them from getting out and pushing, grabbing, spitting on and even pinning patients to the ground. Some assaults have been so serious that the victims required emergency room care afterward.

Antiabortion violence has been addressed in various ways by the federal government and state legislatures, as well as by the courts. In 1994, the U.S. Supreme Court in *NOW v. Scheidler* ruled that clinics could use a law originally created to target the Mafia, the Racketeer Influenced and Corrupt Organizations Act (RICO), to sue violent protesters. The court declared that antiabortion radicals’ attempt to drive clinics out of business through violence and threats paralleled that of mobsters, even though the former lacked the economic motivation of the latter.

On the heels of that decision came the Freedom of Access to Clinic Entrances Act (FACE), which Congress passed with bipartisan support in 1994. FACE prohibits using “force or threat of force” to intimidate or injure someone entering a health care facility (or a place of worship) or to obstruct access to such a facility. The law also prohibits property destruction and allows clinics to obtain federal injunctions against violent protesters and sue for damages.

States began adopting laws to protect clinic access even before FACE. Wisconsin was the first, in 1985, and currently, 14 states plus the District of Columbia have clinic protection laws on their books (see chart). Many share some or all of the provisions of FACE. In fact, two of the more recently enacted laws—in New York and California—borrow their language directly from FACE.

STATE CLINIC ACCESS PROTECTION LAWS

STATE	YEAR ENACTED	LAW PROHIBITS		
		OBSTRUCTING ACCESS	THREATENING/INTIMIDATING	PROPERTY DAMAGE
CALIFORNIA*	2001	X	X	X
COLORADO	1993	X†		
DISTRICT OF COLUMBIA**	1995	X	X	X
KANSAS	1992	X		
MAINE	1995	X	††	††
MARYLAND	1989	X		
MASSACHUSETTS	2000	X†		
MICHIGAN	1998		X	
MINNESOTA	1993	X		
NEVADA	1991	X		
NEW YORK	1999	X	X	X
NORTH CAROLINA***	1993	X	X	
OREGON	1990	X		X
WASHINGTON	1993	X	X	X
WISCONSIN	1985		X	

*Law also provides for collection and analysis of data on anti-reproductive rights crimes and for law enforcement training with subject-matter experts. **Law also prohibits preventing a health care professional or his or her family from entering or leaving their own home. ***Law also prohibits possessing or having immediate access to a dangerous weapon at a demonstration at a health care facility. †Law creates a floating buffer zone around a patient who is within a specified distance from a clinic entrance door. ††Law specifically prohibits telephone harassment, making excessive noise that can be heard within a building, and releasing a substance that produces a noxious odor.

(Connecticut has a state version of RICO that, while not specifically mentioning clinics, could be used to prosecute violent antiabortionists.)

A third clinic protection technique is the so-called buffer zone. In 1994, the U.S. Supreme Court upheld a Florida court order that established a 36-foot fixed buffer zone around several clinics in the state. However, it struck down a 300-foot “floating” buffer zone around their patients and clinic staff. The court ruled that requiring protesters to stand no closer than 36 feet from the clinic did not infringe on their right to free speech, but that banning them from approaching patients or clinic employees within 300 feet of the clinic without their consent did. Three years later, the court ruled in a similar fashion in a case concerning a handful of New York clinics suing violent protesters, allowing a 15-foot fixed buffer zone around those clinics to stand but invalidating a 15-foot floating buffer zone around patients and clinic workers.

The concept of the floating buffer zone was not destined for failure in the courts, however. In 2000, the U.S. Supreme Court upheld a Colorado law prohibiting protesters from coming within eight feet of a

person who is within 100 feet of the clinic’s entrance door, in part because it required that a protester *intentionally* step into the floating zone to be considered breaking the law. In the two earlier court orders, a protester could be charged even if he were standing still and it were the *patient* who came closer than the allowed distance. In addition, the Supreme Court explained that eight feet was “normal conversational distance” and, therefore, did not violate demonstrators’ free speech rights—whereas the larger floating zones in Florida and New York did.

Clinic protection policies remain controversial. The courts continue to try to balance protesters’ free speech rights with women’s rights to access abortion and other medical care. In October 2001, a federal appeals court affirmed a lower court’s nationwide injunction against blockades, trespassing and property damage to clinics. That same month, another federal appeals court agreed to reconsider a March ruling that had declared posters and Web sites listing abortion providers’ names and addresses under titles such as “Wanted” or “The Deadly Dozen” to be constitutionally protected speech. As for anthrax hoaxes, the House in December unanimously passed a bill

that would make such activity a federal crime; several versions of the bill have been introduced in the Senate.—*V. Lin* 