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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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March 29, 2016

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Lynch,

It is our duty, as members of the Senate Committee on the Judiciary, and the Oversight Subcommittee, to conduct oversight of the United States Department of Justice (DOJ).

As you know, the Freedom of Access to Clinic Entrances Act of 1994 (FACE) is enforced by the DOJ's Civil Rights Division. FACE prohibits any use or threat of force and physical obstruction that intentionally injures, intimidates, or interferes with any person seeking: (1) to obtain or provide reproductive health services, or (2) to exercise the First Amendment right of religious freedom at a place of religious worship.

During your testimony before the Senate Judiciary Committee on March 9, you discussed the DOJ's "active" and "increased" efforts to enforce FACE with respect to interference with reproductive health services. You did not mention places of religious worship. The Civil Rights Division's webpage discussing FACE takes a similar approach. *See* <https://www.justice.gov/crt-12>. After mentioning that FACE covers both abortion services and religious worship, the webpage discusses enforcement only in regard to abortion services. Specifically, the webpage states that the Civil Rights Division's Special Litigation Section

has served a pivotal role in enforcing the Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. § 248, to protect patients and health care providers against threats of force and physical obstruction of reproductive health facilities. The Department has filed more than 15 FACE actions in more than a dozen states and there are ongoing investigations in other states. Section attorneys have obtained temporary restraining orders and preliminary and permanent injunctions under the FACE and have won civil contempt motions for violations of these injunctions.¹

This webpage also links to several FACE cases and settlement agreements concerning abortion clinic workers or abortion facilities. Interestingly, it does not list a single case concerning the freedom of religious exercise at houses of worship.

¹ Additionally, the webpage notes that "the Section serves on the Attorney General's National Task Force on Violence Against Health Care Providers."

Instead, the webpage links to *United States v. Scott*, No. 11-cv-01430 (D. Colo. 2011), but neglects to mention that the case involved a legal action against a peaceful sidewalk counselor and that the Civil Rights Division was forced to seek dismissal of all its claims *with prejudice* after the judge ruled that “the government has failed to show likelihood of success on the merits, period.”

The webpage also links to *Holder v. Pine*, No. 9:10-cv-80971 (S.D. Fl. 2010), another legal action against a peaceful sidewalk counselor, but neglects to mention that the judge in that case wrote that:

- “The Court can only wonder whether this action was the product of a concerted effort between the Government and the [clinic], which began well before the date of the incident at issue, to quell Ms. Pine’s activities rather than to vindicate the rights of those allegedly aggrieved by Ms. Pine’s conduct.”
- “The Government’s failure to take the necessary steps to prevent the destruction of potentially critical evidence was indeed negligent, and perhaps even grossly negligent.”
- “FACE as applied would violate [Defendant] Pine’s First Amendment rights.”
- “The Court is at a loss as to why the Government chose to prosecute this particular case in the first place.”

Finally, the webpage also neglects to mention that the Court in *Pine* subsequently approved a settlement agreement requiring the DOJ to drop its appeals and pay \$120,000 to Ms. Pine for forcing her to incur legal fees in defending against this baseless suit.

The DOJ’s brazen pursuit (and subsequent online promotion) of—at best—frivolous prosecutions in the abortion context, combined with its failure to list *any* prosecutions or enforcement activities in the religious worship context, gives the distinct impression of a warped and biased enforcement of FACE by the DOJ.

To assess whether or not that is the case, I ask that you please respond to the following requests, with the applicable time period for each being January 2009 to present:

FACE Act enforcement with regard to abortion facilities:

- Identify by date, location, and name of organization, every discussion, conference, or meeting (whether by e-mail, text message, phone, video, or in person) between the DOJ and any pro-abortion, “reproductive choice,” or “pro-choice” advocacy group or similar organization, concerning FACE enforcement with regard to access to abortion facilities.
- Identify by date, location, and name of organization, every discussion, conference, or meeting (whether by e-mail, text message, phone, video or in person) between the DOJ

and any abortion clinic or facility, abortion provider, parent organization or affiliate, concerning FACE enforcement with regard to access to abortion facilities.

- Identify by date, location, and name of organization, every discussion, conference, or meeting (whether by e-mail, text message, phone, video or in person) between the DOJ and any anti-abortion, or “pro-life” advocacy group or similar organization, concerning FACE enforcement with regard to access to abortion facilities.
- Identify the number of matters the DOJ has investigated, looked into, or reviewed concerning potential FACE enforcement with regard to access to abortion facilities.
- Identify the number of matters the DOJ has assigned “DJ Numbers” to concerning FACE Act enforcement with regard to access to abortion facilities.
- Identify the number of complaints the DOJ has filed in court concerning FACE enforcement with regard to access to abortion facilities. Please provide copies of these complaints.
- Identify the number of settlement agreements the DOJ has reached concerning FACE enforcement with regard to access to abortion facilities. Please provide copies of these settlement agreements.
- Explain in detail what efforts the Civil Rights Division has undertaken to enforce FACE specifically with regard to access to abortion facilities.

FACE Act enforcement with regard to houses of worship:

- Identify by date, location, and name of organization, every discussion, conference, or meeting (whether by e-mail, text message, phone, video or in person) between the DOJ and any religious freedom or religious liberty advocacy group or similar organization, concerning FACE enforcement with regard to access to houses of worship.
- Identify by date, location, and name of organization, every discussion, conference, or meeting (whether by e-mail, text message, phone, video or in person) between the DOJ and any religious group, house of worship, or similar organization, concerning FACE enforcement with regard to access to houses of worship.
- Identify the number of matters the DOJ has investigated, looked into, or reviewed concerning potential FACE enforcement with regard to access to houses of worship.
- Identify the number of matters the DOJ has assigned “DJ Numbers” to concerning FACE enforcement with regard to access to houses of worship.

- Identify the number of complaints the DOJ has filed in court concerning FACE enforcement with regard to access to houses of worship. Please provide copies of these complaints.
- Identify the number of settlement agreements the DOJ has reached concerning FACE enforcement with regard to access to houses of worship. Please provide copies of these settlement agreements.
- Explain in detail what efforts the Civil Rights Division has undertaken to enforce FACE specifically with regard to access to houses of worship.
- State whether or not the Civil Rights Division investigated, or will investigate, the blocking of the entrance to, and interference with the religious exercise of members of, the Los Angeles, California, house of worship shown in this video, particularly beginning at the 5:08 mark. See <https://www.youtube.com/watch?v=GxagcNFyHyc>. If your answer is no, please explain in detail why the Civil Rights Division did not or will not investigate this incident.

Please provide the requested information as soon as possible, but **no later than 9:00 a.m. on Monday, April 11, 2015.**

We appreciate your cooperation in this very important matter and look forward to receipt of the requested material at the stated date and time. Please contact Committee staff at (202) 224-5225 if you have any additional questions about how to comply with the terms of this production request.

Very truly yours,



Ted Cruz
U.S. Senator



Mike Lee
U.S. Senator

Cc: The Honorable Charles E. Grassley
Chairman
Senate Committee on the Judiciary

The Honorable Patrick J. Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable Christopher A. Coons
Ranking Member
Subcommittee on Oversight, Agency Action,
Federal Rights and Federal Courts