



July 1, 2008

**Communication to Ms. Margaret Sekaggya,
Special Representative for Human Rights Defenders**

Submitted by the Center for Reproductive Rights on behalf of
Medical Professionals Who Provide Abortions in the United States

This communication documents the failure of the United States to guarantee the rights of a particular class of women’s human rights defenders—medical professionals who provide abortion services. The human rights to dignity, liberty and security require that women have reproductive and sexual self-determination.¹ This right to reproductive autonomy includes women’s ability to control the number and spacing of their children, as well as the rights to information, privacy and confidentiality.² In addition, the right to health necessarily comprises the right to sexual and reproductive health.³ Women have a right to reproductive healthcare services that are widely available, economically and physically accessible to all women, and of good quality.⁴ In the United States, women’s reproductive rights include a constitutional right to abortion. These rights cannot be fulfilled unless medical professionals are able to provide abortion and other related services free of violence and harassment by public and private actors.

Physicians are women’s human rights defenders who work to enable women to exercise their human rights to reproductive health and reproductive autonomy. The U.S. has a duty to respect, protect, and fulfill the ability of medical professionals to perform abortions in order to realize women’s reproductive rights. The Declaration on Human Rights Defenders (“the Declaration”),⁵ adopted unanimously by the UN General Assembly in 1999, recognizes the important role of human rights defenders and sets forth the rights pertaining to them. The previous Special Representative on Human Rights Defenders, Ms. Hina Jilani, recognized that those who promote women’s right to sexual and reproductive health are women’s human rights defenders.⁶ She also identified healthcare providers as human rights defenders where those individuals faced great risk in working to promote the rights of others.⁷

From 1973 through the present, when the constitutional right to an abortion was recognized in the U.S. Supreme Court decision *Roe v. Wade*,⁸ physicians who provide abortions have been targeted for harmful treatment by both state and non-state actors. Because anti-abortion extremists cannot legally prohibit women from exercising their rights, they target physicians to make it impossible for them to provide abortion services.

In this communication we show how those physicians are forced to work under circumstances far more dangerous and difficult than other healthcare providers in the United States. There is a long history of violations to physicians' physical security—including murder, attempted murder, and assault and battery—without adequate protection from the state. Physicians providing abortions increasingly are faced with other forms of violence and harassment, including destruction of personal property, smear campaigns, intimidation of family members, and stalking.

The government has failed to take adequate measures to protect medical professionals who provide abortions. Federal and state laws are inadequate to deter many forms of violence and harassment directed at abortion providers and their families, and enforcement of protective laws that do exist has waned in recent years. Further, the state and federal government often pass legislation targeting abortion providers, subjecting them to criminal penalties and other sanctions that are not imposed on providers of comparable medical services. Other laws are designed to impose additional burdens on abortion providers or allow private groups to use state mechanisms as tools of harassment.

The cumulative effect of these attacks by state and non-state actors is that fewer and fewer physicians are willing or able to provide abortion services in the U.S. The number of abortion providers has fallen by at least 37 percent since 1982.⁹ As a result, 87 percent of U.S. counties and 97 percent of non-metropolitan counties have no abortion provider, and these counties are home to one-third of women of reproductive age.¹⁰ The consequence is that women in the United States increasingly face diminished access to abortion services.

I. Persistent Attacks on Medical Professionals

Physicians who provide abortions face a variety of threats to their life, bodily or mental integrity, including threats to their physical security, destruction of private property, and attacks on their private life, family, and reputation. These attacks threaten the ability of medical professionals to provide reproductive healthcare, jeopardizing women's access to necessary services.

A. Attacks on Physicians' Physical Security

There is a long history of violence, death threats, and murder of physicians who perform abortions in the United States, undertaken with the express purpose of preventing physicians from providing abortions. Since 1973, three physicians and four clinic workers in the U.S. have been killed by anti-abortion extremists.¹¹ Five other physicians or clinic workers have been seriously injured in such attacks.¹² On August 19, 1993, an anti-abortion extremist attempted to assassinate Dr. George Tiller,¹³ a physician who operates a medical practice, Women's Health Care Services (WHCS), in Wichita, Kansas, where he provides abortion services to women from across the country. He specializes in later term abortion services for women who face substantial health risks or fetal anomalies. Because he is one of only three physicians in the country who provides

abortions later in pregnancy, his clinic is a frequent target for harassment and violence by anti-abortion protesters and extremists.¹⁴

Prior to the shooting, WHCS had been targeted for two years by anti-abortion forces dedicated to closing the clinic at whatever cost. In 1991, an extremist group called Operation Rescue led a six-week siege on WHCS during its “Summer of Mercy” protest in Wichita, which involved numerous blockades of clinic entrances; death threats to doctors who perform abortions; and daily, often violent, protests at abortion clinics.¹⁵ The government did not take adequate measures to protect Dr. Tiller, such as ordering federal marshal protection,¹⁶ despite a known, significant association between severe intimidation tactics and violence against abortion clinics.¹⁷ Tellingly, Dr. Tiller’s would-be assassin had participated in the Summer of Mercy blockades as a member of the Army of God, an underground network that believes violence is acceptable and justifiable to end abortion.¹⁸ The correlation between intimidation and severe violence continues today. In 2005, clinics facing one or more forms of intimidation were three times more likely to experience violence compared with clinics that experienced no intimidation tactics.¹⁹ Although the incidence of severe clinic violence has decreased over the past decade, moderate-level violence—including severe violence variables as well as vandalism, home picketing, and invasions—is on the rise.²⁰

Severe violence has decreased in large part because providers have been forced to take extreme security measures that are expensive and burdensome to maintain. Clinics have spent thousands of dollars to install maximum security measures, including security barriers, bulletproof glass, metal detectors, and security cameras.²¹ Maintenance of alarm systems and security personnel amount to tens of thousands of dollars.²² Providers also take precautionary measures at their private homes for fear of being targeted there. For example, Dr. Tiller wears a bullet proof vest and moved to a home in a gated community with a state-of-the-art security system and barrier wall in order to protect himself and his family from shootings by extremists.²³ Although some abortion providers have been placed under federal marshal protection for certain brief periods of time, in general they must provide and pay for their own security. Continued threats to abortion providers’ physical security is a key factor contributing to the decline in physicians who provide abortions around the country.²⁴

B. Destruction of Private Property

Today, one in five abortion clinics in the U.S. is targeted with forms of violence considered the most severe, including bombing, arson and invasion.²⁵ Between the years 1977-2007, there were over 41 bombings, 175 arsons, 94 attempted bombings and arsons, and 623 bomb threats directed at abortion providers, resulting in \$8.5m in damages.²⁶ Since May 2007, four clinics in New Mexico, Virginia, and California have been damaged or attacked by arson.²⁷ One clinic in Albuquerque, New Mexico run by Dr. Curtis Boyd was destroyed by fire in December 2007 after arsonists threw a gas can into the exam room and lit it on fire.²⁸

As many as one in four abortion clinics have now experienced some form of vandalism, a substantial increase from the late 1990s.²⁹ For example, in 2007, Dr. Tiller's facility was attacked by vandals who cut a hole in the ceiling of WHCS, inserted a garden hose, and flooded part of the facility with several inches of water. They also attempted to seal the gates of the parking lot.³⁰ WHCS was forced to close for more than a month due to mold damage.³¹ The closure prevented approximately 230 women from obtaining reproductive health services at the clinic and resulted in at least \$86,000 of damages, not including lost income.³² This was the second time that WHCS was forced to close; the first was in 1986, when a bomb exploded at the clinic and caused \$100,000 in damage.³³

Abortion opponents have also targeted the private property of physicians who provide abortions, yet these crimes have seldom been prosecuted. For example, in 1991, a suspicious fire was set on the property of Dr. Leroy Carhart, a Nebraska physician who provides later term abortion services. Arsonists set seven fires on Dr. Carhart's property, destroying his family home and horse barn.³⁴ The fire also killed two family pets and 17 horses.³⁵ County officials bulldozed the site immediately, destroying any potential evidence before arson investigators could arrive.³⁶ An anonymous letter delivered to the clinic the next day claimed that the fire was justified by Dr. Carhart's performance of abortions.³⁷ Yet, no one was ever charged in the case.³⁸

C. Attacks against Private Life, Family, and Reputation

Now that a federal law prohibits clinic blockades,³⁹ anti-abortion extremists have shifted tactics and begun to wage smear campaigns—some of which advocate violence—against doctors providing abortions. Abortion providers including Dr. Tiller have been featured in “most-wanted” posters resembling the posters used by the FBI to track down most-wanted criminals.⁴⁰ Some of these posters offered a \$1,000 reward for stopping physicians from performing abortions.⁴¹ Two physicians featured on these posters were later assassinated.⁴² Some anti-abortion extremists, including the extremist who tried to murder Dr. Tiller, defend the murder of abortion providers as “justifiable homicide.”⁴³ These actions are facilitated by websites such as the infamous “Nuremburg Files,” which until it was shut down by a federal judge in 1999 published the names, addresses, and other identifying information of abortion providers, with the names of those who had been killed crossed out in black.⁴⁴

Smear campaigns are carefully coordinated to pressure abortion clinics to go out of business. Employees of Dr. Tiller's clinic have been subjected to continuous smear campaigns since the 2004 “Year of Rebuke” organized by Operation Rescue.⁴⁵ The “name and shame” campaign involved targeted picketing of each clinic employee. Protesters picketed outside private homes, mailed postcards to their neighbors, greeted employees at restaurants with photos of mangled fetuses, and even sorted through employees' home garbage.⁴⁶ They also drove a moving billboard of bloody post-abortion fetuses around the neighborhoods where clinic employees live and work.⁴⁷ Operation Rescue even mounted an attack against over 200 companies doing business with the clinic or Dr. Tiller personally, demanding that they cease their affiliations or face a

boycott.⁴⁸ Recently, anti-abortion extremists in Wichita have begun a public shaming campaign entitled “People Are Watching,” where they wear binoculars and stake out the movements of Dr. Tiller and his employees.

Many of these forms of harassment are protected speech under the U.S. Constitution. However, the established link between forms of intimidation and violence against abortion providers requires heightened diligence on the part of state actors to monitor potential threats, provide proper training to law enforcement and other public officials to offer the same level of protection to abortion providers as other human rights defenders, and promptly investigate instances when public expression crosses the line to threatening behavior.⁴⁹

II. U.S. Government’s Failure to Protect Physicians or Provide an Effective Remedy for Violations

Under article 12 of the Declaration, the United States has an obligation to take all necessary measures to protect human rights defenders against any violence, threats, or retaliation directed against them as a result of their activities to defend human rights. The government also has an obligation to conduct a prompt and impartial investigation or inquiry whenever allegations of a violation arise, punish acts or provide redress as appropriate, and enforce judicial decisions on remedies.⁵⁰ However, the U.S. has not only failed to adequately protect physicians from attacks on their physical security, it has failed to provide an effective remedy in the event that violations do occur.

A. Federal Response: Non-recognition of Violations and Lack of Enforcement

Following a peak of clinic blockades and violence against abortion providers in the early to mid 1990s, in 1994 the federal government passed the Federal Access to Clinic Entrances (FACE) Act⁵¹ to protect physicians providing abortions and women seeking to access clinics. There have been several successes, including the prosecution of Dr. Tiller’s attacker. While it aims to deter some of most egregious forms of violence directed at abortion providers, FACE does not recognize the full range of harassment they experience, including severe intimidation that has been linked to violence.⁵² FACE does not explicitly define areas that the protesters are prohibited from entering, but rather provides for injunctive relief or civil remedies only after a FACE violation has occurred.

Abortion opponents soon learned the loopholes in FACE and began to embrace more sophisticated tactics. First, they concentrated their harassment on a small number of physicians with the aim of forcing them to stop performing abortions. Second, their tactics became increasingly more personal, involving protests at providers’ private homes where FACE does not reach. Meanwhile, violence against physicians and clinics continues, albeit in different forms. While blockades have decreased and no one has attempted to murder a physician since 1998, other forms of violence including assault and battery, death threats, bomb threats and stalking are on the rise, reaching their highest levels in 2007 since the 1990s.⁵³

Finally, there are signs that FACE enforcement is waning. In 1995, President Clinton ordered the Department of Justice (DOJ) to establish local working groups in each U.S. Attorney's office. The purpose of these working groups was to maximize coordination and communication among federal, state and local law enforcement and to better address security risks at clinics. After the 1998 slaying of an abortion provider named Dr. Barnett Slepian, Attorney General Janet Reno established a national Task Force on Violence Against Health Care Providers to assist the local working groups and coordinate national investigation and prosecution of abortion clinic violence.⁵⁴ This system was meant to address a problem that arose soon after FACE was passed, where federal and state authorities dodged jurisdiction when they received complaints.⁵⁵ The local working groups proved to be a key mechanism for effective FACE enforcement because they coordinated trainings and responses to clinic violence at the local level. However, these working groups have been dormant under the Bush Administration. Consequently, over the past eight years providers have complained that DOJ acts belatedly, if at all, in response to alleged FACE violations.⁵⁶

B. Inadequate State-Level Responses

Recognizing the loopholes in FACE, a few states have passed legislation providing further protection of clinics against the activities of anti-abortion extremists.⁵⁷ For example, six states prohibit threatening or intimidating staff or patients entering a reproductive healthcare facility.⁵⁸ A handful of states prohibit property damage or other forms of harassment such as telephone threats or possessing a weapon during a demonstration at a facility.⁵⁹ Six states have taken further steps to protect providers by passing "buffer zone" legislation requiring that protesters stay a certain number of feet away from people accessing the clinic or from clinic entrances.⁶⁰ However, the vast majority of states lack legislation to prohibit activities not covered by FACE that are designed to frighten and intimidate providers, and that often cross the line to violence. As federal enforcement of FACE wanes, stronger state level protection is needed to deter violence by extremists and ensure that victims of violence receive a remedy for the countless forms of harassment and intimidation they experience at home and at work.

III. Government Regulations and Restrictions on the Right to an Abortion

Article 11 of the Declaration sets forth the duty of the state to respect the right of human rights defenders to the lawful exercise of their profession.⁶¹ However, the federal and state governments are making it increasingly difficult for physicians to exercise this human right, in turn compromising their ability to provide comprehensive reproductive healthcare to their patients. A panoply of state and federal laws create a complicated legal minefield for abortion providers. Physicians who perform abortions are subject to far greater risk of legal liability than physicians who provide comparable medical services. They work with fear of criminal sanctions, civil liability, or loss of their medical license if they unintentionally fail to comply with one of the many regulations governing every aspect of their medical practice. In addition to fear of legal liability, these regulations impose insurmountable economic barriers that force many physicians to cease providing services. Being forced to navigate a legal minefield in order to provide

abortion deters many physicians from offering the service at all, resulting in a provider shortage and diminished abortion access for women.

A. Criminal Penalties and other Severe Sanctions on Physicians

Laws that single out abortion providers regulate everything from the methods physicians use to perform abortions, the physical plant requirements of their facilities, and staffing levels and qualifications. Failure to comply with these requirements can result in substantial criminal sanctions, civil penalties, or loss of medical licensure. In contrast, all other doctors, including those in the field of gynecology and obstetrics who do not perform abortions, are subject only to professional ethics codes and medical malpractice laws. For example, as a physician who provides abortion services in the state of Kansas, Dr. Tiller must comply with four laws that *do not apply* to other kinds of physicians. These laws include:

- A state ban on certain methods of abortion that carries a penalty of **imprisonment for non-compliance**. Kan. Stat. Ann. § 65-6721.
- A federal ban on certain methods of abortion that carries a penalty of **2 years imprisonment**. 18 U.S.C.A. § 1531 (2003).
- A Kansas law requiring that another financially and legally independent doctor verify the first physician's independent judgment that a post-viability abortion is necessary. Failure to comply could result in **one year imprisonment, the loss of a medical license or fines**. Kan. Stat. Ann. § 65-6703(a).
- A biased counseling law that requires Dr. Tiller to provide patients medically unnecessary or inappropriate materials to patients 24 hours prior to receiving an abortion. A violation could lead to **loss of a medical license or fines**. Kan. Stat. Ann. §§ 65-6701; 65-6708-15.

In addition, 44 states and the District of Columbia impose regulations on abortion providers that do not apply to other medical professionals.⁶² Known as Targeted Restrictions on Abortion Providers (TRAP), these laws regulate where abortions can be performed and who can perform them. Generally, compliance is difficult due to the complicated, detailed nature of the requirements and the great expense involved. Failure to comply with TRAP laws can carry criminal penalties, civil liability, or loss of licensure for physicians employed by the clinic. (The economic burden of TRAP laws on clinics is discussed in Section III(B).)

Finally, the state of Louisiana has a particularly insidious law stating that physicians may be held strictly liable to a woman on whom an abortion is performed for any harm resulting to the pregnant woman or the fetus. This special statute replaces medical malpractice laws for physicians who perform abortions, thus making an abortion provider legally liable even if he or she complied with the appropriate standard of care.⁶³ Because an abortion causes harm to the fetus *by definition*, a doctor performing this procedure is left open to civil liability with every procedure he or she performs.

B. Insurmountable Economic Burdens on Physicians Providing Abortions

TRAP laws impose burdensome requirements on the facilities where medical professionals provide abortions that are far more stringent than regulations applied to facilities where comparable medical procedures are performed. TRAP laws are not medically necessary and have neither the purpose nor effect of improving the quality of abortion care. For example, a TRAP law in South Carolina requires that abortion facilities keep their outdoor shrubbery insect-free.⁶⁴ Moreover, the cost and burden of compliance with these regulations can be so high that some physicians may not be able to continue providing abortion services. A current TRAP law in Missouri would require such significant renovations to abortion facilities that three out of four of Missouri's clinics would be forced to shut down, cease providing abortions entirely, or undergo prohibitively expensive renovations.⁶⁵

C. Selective Investigations and Prosecutions

Navigating the legal minefield is difficult in itself for physicians, but public officials with political motivations can substantially heighten the risk. Zealous prosecutors have abused the power of their state office to investigate and prosecute physicians providing abortion services. For example, former Kansas Attorney General Phill Kline, who described himself as “unabashedly pro-life,”⁶⁶ initiated an aggressive multi-year inquisition of Dr. Tiller for the purpose of investigating whether he violated Kansas abortion law. Kline issued subpoenas for the private medical records of 90 of Dr. Tiller's patients and eventually charged him with 30 misdemeanor crimes based on their contents.⁶⁷ Kline's successor as Attorney General, Paul Morrison, convinced the Kansas Supreme Court to drop the misdemeanor charges against Dr. Tiller because according to his office, the basis of the charges was “absolutely inaccurate and false”⁶⁸ and “based on a political agenda.”⁶⁹

States also grant private citizens the power to trigger the minefield of legal liability for abortion providers. For instance, two anti-abortion extremist groups in Kansas used an 1887 state law to convene a “citizen grand jury” to investigate whether Dr. Tiller violated the state's abortion laws, even though the state was conducting its own investigation of Dr. Tiller at the time.⁷⁰ Fortunately, the Kansas Supreme Court recently held that the citizen grand jury must take certain precautions to protect patient privacy when issuing subpoenas of medical records.⁷¹ Despite these limits, the state has allowed the citizen grand jury to be turned into a mechanism for the harassment of physicians and an anti-abortion “political weapon.”⁷²

IV. Conclusion

The perseverance of abortion providers in providing women constitutionally protected healthcare served in the face of great risks to their safety, reputation, and profession deserves great admiration, as well as greater protection by the federal and state governments. The failure to respect, protect and fulfill the rights of this group of human rights defenders takes an enormous toll on these courageous individuals, who must

endure the constant stress of harassment and intimidation, the fear of greater violence, and the burden of substantial expenses in security measures and legal fees. However, the impact does not stop there. Some physicians claim they are forced to abandon their abortion practices out of sheer stress and exhaustion or out of necessity to protect themselves and their families.⁷³

The numerous barriers to physicians performing abortions ultimately results in women losing access to abortion. The words of one of Dr. Tiller's patients, Sarah Coe,⁷⁴ are instructive. Sarah obtained an abortion from Dr. Tiller after her fetus was diagnosed with severe hydrocephaly in her 22nd week of gestation, a condition denying oxygen to the brain that would likely lead to fetal death during pregnancy or birth. Sarah was unable to find a physician near her home who would perform an abortion and was directed to WHCS. In acknowledging her gratitude to Dr. Tiller, she also stated, "It scares me. If something happens to Dr. Tiller, where would women turn?"⁷⁵

The United Nations has recognized the special role that human rights defenders play in defending and promoting the rights of others. We urge you to investigate the full range of violations committed against physicians and other reproductive health providers who perform abortions in the United States. Please do not hesitate to contact our office with any further questions or with requests for assistance.

Sincerely,

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Endnotes

¹ *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, ¶¶ 7.3, 7.17, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter ICPD Programme of Action]; *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, ¶¶ 96, 106(g), U.N. Doc. A/CONF.177/20 (1995) [hereinafter *Beijing Declaration and Platform for Action*].

² Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, arts. 10(h), 16.1(e), U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981) [hereinafter CEDAW]; ICPD Programme of Action, Principle 8, ¶¶ 7.2, 7.45; Beijing Declaration and Platform for Action, ¶¶ 106(f), 107(e), 223.

³ Committee on Economic, Social, and Cultural Rights (CESCR), *General Comment No. 14: the Right to the Highest Attainable Standard of Health*, ¶ 8, U.N. Doc. E/C.12/2000/4 (July 4, 2000) [hereinafter CESCR General Comment No. 14]; CEDAW, art. 12; ICPD Programme of Action, Principle 8.

⁴ CESCR, General Comment No. 14, ¶ 12.

⁵ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, *adopted* Mar. 8, 1999, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (1999) [hereinafter Declaration on Human Rights Defenders].

⁶ *Promotion and Protection of Human Rights Defenders: Report Submitted by Ms. Hina Jilani, the Special Representative of the Secretary-General on Human Rights Defenders, pursuant to the Commission on Human Rights Resolution 2000/61*, 58th Sess., ¶ 92, U.N. Doc. E/CN.4/2002/106 (2002); *see also* Amnesty International, Background: Human Rights Defenders, <http://www.amnesty.org/en/human-rights-defenders/background> (last visited June 20, 2008) (including “women working for the promotion of reproductive rights” as human rights defenders).

⁷ *See Report Submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani*, 4th Sess. 2007, ¶¶ 70-72, U.N. Doc. A/HRC/4/37 (2007) (explaining that since the establishment of her mandate, the Special Representative has sent 36 communications to countries in all regions concerning the right to health and has raised issues ranging from threats to health providers treating civilians in the Occupied Territories to those assisting people living with HIV/AIDS in China); Hum. Rts. Council, *Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani*, 7th Sess. 2008, ¶¶ 283-88, 1080-83, U.N. Doc. A/HRC/7/28/Add.1 (2008) (summarizing urgent appeals the Special Representative made to governments in 2008 regarding physicians who work with especially vulnerable populations, including people living with HIV/AIDS and healthcare for victims of sexual abuse); *see also* HUMAN RIGHTS FIRST, PROTECTING HUMAN RIGHTS DEFENDERS: ANALYSIS OF THE NEWLY ADOPTED DECLARATION ON HUMAN RIGHTS DEFENDERS, Part I and II(D), http://www.humanrightsfirst.org/defenders/hrd_un_declare/hrd_declare_1.htm (last visited June 20, 2008) (noting that the Declaration recognizes that while physicians may not be viewed primarily as human rights defenders, they play a crucial role in safeguarding the human rights of others).

⁸ 410 U.S. 113 (1973).

⁹ Lawrence Finer & Stanley Henshaw, *Abortion Incidence and Services in the United States in 2000*, 35 PERSP. ON SEXUAL & REPROD. HEALTH 6, 10 (2003) (showing there were 1,819 abortion providers in 2000, down 11% from 1996, and that the number of providers fell 14% between 1992 and 1996).

¹⁰ *Id.* at 10-11.

¹¹ NAT’L ABORTION RIGHTS ACTION LEAGUE (NARAL) PRO-CHOICE AM. FOUND., CLINIC VIOLENCE AND INTIMIDATION 1-3 (2007), <http://www.prochoiceamerica.org/assets/files/Abortion-Access-to-Abortion-Violence.pdf> [hereinafter NARAL, CLINIC VIOLENCE AND INTIMIDATION].

¹² Nat’l Abortion Fed’n (NAF), History of Violence: Murders and Shootings, http://www.prochoice.org/about_abortion/violence/murders.asp (last visited June 20, 2008).

¹³ Seth Faison, *Abortion Doctor Wounded Outside Kansas Clinic*, N.Y. TIMES, Aug. 20, 1993.

¹⁴ Stephanie Simon, *A Late Decision, a Lasting Anguish*, L.A. TIMES, May 31, 2005, at A1.

¹⁵ Eric Harrison, *Local Groups take up Wichita Abortion Fight*, L.A. TIMES, Aug. 27, 1991, at A18.

¹⁶ The federal government ordered temporary federal marshal protection for Dr. Tiller after he was shot, but not prior to the attempt. Interview with Dr. George Tiller in Wichita, Kan. (Apr. 9, 2008).

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- ¹⁷ MICHELLE WOOD ET AL., FEMINIST MAJORITY FOUND., 2005 NATIONAL CLINIC VIOLENCE SURVEY 9 (2006), http://feminist.org/research/cvsurveys/clinic_survey2005.pdf [hereinafter FMF Clinic Violence Survey].
- ¹⁸ James Risen, *Anti-Abortion Zealot's Gun May Have Wounded Allies*, L.A. TIMES, Apr. 18, 1994, at A1; NAF, *Anti-Abortion Extremists, The Army Of God and Justifiable Homicide*, http://www.prochoice.org/about_abortion/violence/army_god.html (last visited June 19, 2008).
- ¹⁹ FMF Clinic Violence Survey, *supra* note 17, at 9.
- ²⁰ *Id.* at 3.
- ²¹ NARAL, CLINIC VIOLENCE AND INTIMIDATION, *supra* note 11, at 9; Lisa J. Adams, *Abortion Clinics Increase Security After Latest Outbreak of Violence*, ASSOC. PRESS, Jan. 4, 1995.
- ²² For example, Dr. Tiller spends over \$70,000 annually on security personnel and maintenance for the clinic's alarm system. Interview with Dr. Tiller, *supra* note 16; *see also* Lorraine Adams, *Abortion Doctor Thanked Clinton at Coffee*, WASH. POST., Apr. 1, 1997, at A4.
- ²³ Interview with Dr. Tiller, *supra* note 16.
- ²⁴ *Finer & Henshaw*, *supra* note 9, at 14.
- ²⁵ NARAL, CLINIC VIOLENCE AND INTIMIDATION, *supra* note 21, at 5.
- ²⁶ *Id.* at 3.
- ²⁷ Dan Frosch, *Albuquerque Has Renewal of Attacks on Abortion*, N.Y. TIMES, Dec. 28, 2007; NAF, *Member Security Alert*, Feb. 20, 2008 (on file with Ctr. for Reproductive Rts.).
- ²⁸ Maggie Shepard, *Albuquerque Abortion Clinic Fire Was Arson*, *Feds Say*, ALBUQUERQUE TRIB., Dec. 8, 2007.
- ²⁹ FMF Clinic Violence Survey, *supra* note 17, at 8.
- ³⁰ *Tiller's Abortion Clinic Vandalized* (KAKE 10 ABC television broadcast July 4, 2007), <http://www.kake.com/news/headlines/8324012.html> (last visited June 19, 2008).
- ³¹ Stephanie Simon, *Pressure Rises for Abortion Provider*, L.A. TIMES, Sept. 17, 2007.
- ³² Interview with Dr. Tiller, *supra* note 16.
- ³³ No one was ever prosecuted for the crime, and the case is now closed because the statute of limitations has run. NAF, *History of Violence: Arson and Bombings*, http://www.prochoice.org/about_abortion/violence/arsons.asp (last visited June 19, 2008).
- ³⁴ Sandy Banisky, *Abortion 'Circuit Rider' Accepts Risks; 'Stubborn' Doctor Defies Many Threats*, ST. LOUIS POST DISPATCH, Sept. 7, 1993, at B5.
- ³⁵ *Id.*; Pam Belluck, *After Abortion Victory, Doctor's Troubles Persist*, N.Y. TIMES, Nov. 7, 2000, at A18.
- ³⁶ Diane Carman, *Top Court, Arapahoe Draw Line*, DENVER POST, June 29, 2000, at B1.
- ³⁷ *Id.*
- ³⁸ *Id.*
- ³⁹ *See infra* Part II(A).
- ⁴⁰ Mary Jordan & Don Phillips, *Abortion Foe Arrested in Shooting; Wounded Doctor Returns to Clinic*, WASH. POST, Aug. 21, 1993, at A1.
- ⁴¹ *Id.*
- ⁴² PEG JOHNSTON, SOUTHERN TIER WOMEN'S SERVICE, OPTING OUT OF THE WAR (NAT'L COALITION OF ABORTION PROVIDERS, PROVIDER SPEAKERS SERIES) 3 (1998-2002), <http://www.ncap.com/images/PDFS/providerspeakjohnston.pdf>.
- ⁴³ Risen, *supra* note 18 (noting that Rachelle Shannon commented to a policeman as she was being arrested, "Did I get him? If ever there was a justifiable homicide, this was it."); NAF, *Anti-Abortion Extremists*, *supra* note 18; Gustav Niebuhr, *To Church's Dismay, Priest Talks of 'Justifiable Homicide' of Abortion Doctors*, N.Y. TIMES, Aug. 24, 1994.
- ⁴⁴ Johnston, *supra* note 42, at 3; NARAL, *supra* note 11, at 7-8.
- ⁴⁵ Kimberley Sevcik, *One Man's God Squad*, ROLLING STONE, July 28, 2004.
- ⁴⁶ *Id.*; Stephanie Simon, *Protesters Who Push the Limits*, L.A. TIMES, Feb. 17, 2004, at A1.
- ⁴⁷ NARAL, *supra* note 21, at 8; Mary Sanchez, *Editorial, Abortion Debate Needs Reason*, KANSAS CITY STAR, Jan. 27, 2004, at B5.
- ⁴⁸ NARAL, *supra* note 11, at 8-9; Sevcik, *supra* note 45.
- ⁴⁹ *See* Declaration on Human Rights Defenders, art. 9(5) (imposing a duty on the state to "conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its

jurisdiction); *id.* art 15 (imposing a duty on the state “to ensure that all those responsible for training ... law enforcement officers ... and public officials include appropriate elements of human rights teaching in their training programme.”).

⁵⁰ *Id.* arts. 9, 12, 14, 15.

⁵¹ 18 U.S.C. § 248 (1994). FACE makes it unlawful for a person to use force, threat of force, or physical obstruction to intentionally injure or intimidate a person because s/he is or has been obtaining or providing reproductive health services, or to intentionally damage or destroy the property of a facility because it provides reproductive health services. Punishment for a violation of the statute ranges from monetary fines for non-violent physical obstructions to criminal imprisonment for actions resulting in bodily injury.

⁵² See Dep’t of Justice, National Task Force on Violence Against Health Care Providers, <http://usdoj.gov/crt/crim/faceweb.htm> (last visited June 19, 2008) (explaining that conduct found illegal under FACE is limited to: physical attacks on clinic employees and escorts, attempted arson of facilities, blockages of clinic entrances, and threats of bodily harm communicated to providers or patients); see also *infra* Part I(A).

⁵³ NAF, INCIDENTS OF VIOLENCE & DISRUPTION AGAINST ABORTION PROVIDERS IN THE U.S. AND CANADA 1 (2008),

http://www.prochoice.org/pubs_research/publications/downloads/about_abortion/violence_statistics.pdf.

⁵⁴ See Dep’t of Justice, *supra* note 52.

⁵⁵ Robert Pear, *Abortion Clinic Workers Say Law Is Being Ignored*, N.Y. TIMES, Sept. 23, 1994.

⁵⁶ Interview with an abortion provider in the South (identity concealed for protection) (Mar. 10, 2008).

⁵⁷ NAF, FREEDOM OF ACCESS TO CLINIC ENTRANCES (FACE) ACT 4 (2006),

http://www.prochoice.org/pubs_research/publications/downloads/about_abortion/face_act.pdf.

⁵⁸ GUTTMACHER INST., STATE POLICIES IN BRIEF: PROTECTING ACCESS TO CLINICS 1 (2008),

http://www.guttmacher.org/statecenter/spibs/spib_PAC.pdf.

⁵⁹ *Id.*

⁶⁰ *Id.*; see, e.g., COL. REV. STAT. § 18-9-122 (2008) (imposing a 100 foot buffer zone around the facility’s entrances); MASS. GEN. LAWS. ch. 266, § 120E 1/2 (2008) (restricting anyone who is not an employee, patient, law enforcement officer, or passerby from coming within 35 feet of the entrance to a reproductive healthcare facility, or otherwise obstructing access to the entrances).

⁶¹ Declaration on Human Rights Defenders, art. 11.

⁶² NARAL, Who Decides?, http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/fast-facts/issues-trap.html (last visited June 20, 2008).

⁶³ LA. REV. STAT. ANN. § 9:2800.12 (2008).

⁶⁴ S.C. CODE ANN. REGS. 61-12 § 606 (2008).

⁶⁵ The law is currently enjoined by a federal court. *Planned Parenthood of KS v. Drummond*, No. 07-4164-CV-C-ODS, 2007 WL 2811407 (W.D. Mo. Sept. 24, 2007). However, in a separate case filed under state law by one clinic, a judge recently upheld the law’s constitutionality. *Daily Women’s Health Pol’y Rep.*, Mo. Judge Rejects PPKM Argument against State Law to Reclassify Abortion Clinics as Ambulatory Surgical Centers (2008), at <http://www.nationalpartnership.org> (last visited June 20, 2008).

⁶⁶ Emily Friedman, *Could One Man Influence Abortion Law?*, ABC NEWS.COM, Oct. 22, 2007, <http://abcnews.go.com/TheLaw/Story?id=3752146&page=1> (quoting Kline’s spokesman, Brian Burgess).

⁶⁷ Laura Bauer & Jim Sullinger, *Kline’s Abortion Charges Derailed; a Judge Dismisses 30 Counts Filed by the Attorney General against a Wichita Doctor*, KAN. CITY STAR, Dec. 23, 2006, at A1.

⁶⁸ Friedman, *supra* note 66 (quoting Morrison’s spokeswoman, Ashley Anstaett).

⁶⁹ Emily Bazelon, *Record Shopping*, SLATE, Apr. 8, 2008, <http://www.slate.com/id/2187961/>. The state of Kansas later filed 19 misdemeanor charges against Dr. Tiller on the grounds that he had failed to obtain a referral from a Kansas physician with whom he was not financially or legally affiliated in violation of KAN. STAT. ANN. § 65-6703(a) (2007). Dr. Tiller has moved to dismiss all the charges, which are still pending. No investigation, however, has ever found any wrongdoing as to his medical judgment or the basis on which he has complied with Kansas law governing the medical circumstances under which a late term abortion may be performed.

⁷⁰ The grand jury issued subpoenas seeking all records of women who consulted a physician at WHCS when her fetus was 22 weeks gestation or more from July 1, 2003 through Jan. 18, 2008, even if the women did not have an abortion.

⁷¹ *Tiller v. Corrigan*, 182 P.3d 719 (Kan. 2008).

⁷² Monica Davey, *Grand Juries Become Latest Abortion Battlefield*, N.Y. TIMES, June 17, 2008, at A1 (quoting a Republican state senator, “[the citizen grand jury] is being used in a political way to further a political cause, and that was never the purpose of the grand jury system in Kansas.”).

⁷³ NARAL, *supra* note 21, at 11 (quoting Dr. Stephen Dixon, who closed his clinic in the District of Columbia in 1999 because of the “heavy toll” the anti-abortion extremists had taken on him).

⁷⁴ The name of the patient has been changed to protect her privacy.

⁷⁵ Interview with Sarah Coe (Apr. 1, 2008).