Thomas More SOCIETY

January 14, 2025

The Honorable Donald J. Trump
45th & 47th President of the United States of America
Mar-a-Lago
1100 South Ocean Boulevard
Palm Beach, Florida 33480

Re: Petitions for Pardon of 21 Peaceful Pro-Life Advocates

Dear President Trump:

Congratulations on your re-election to serve this Great Nation as our President. Thank you for your consistent, vigorous opposition to the weaponization of the Justice Department by the Biden Administration, as repeatedly expressed during your successful 2024 campaign.

We represent peaceful pro-life Americans, some of whom were unjustly imprisoned and others unjustly convicted by the Biden Department of Justice for demonstrating at abortion facilities. They have been heartened during their imprisonment and unjust prosecutions by your repeated messages to them during your campaign, urging them to persevere until you were able to take office, review their cases, and free them. They are also especially thankful for your highlighting their plight to the public, including your specific noting of the injustice of the imprisonment of our clients, many still suffering in prison today because of the callous cruelty of the Biden DOJ.[1]

These peaceful pro-life Americans mistreated by Biden include grandparents, pastors, a Holocaust survivor, and a Catholic priest—all are selfless, sincere patriots. Their respective plights and personal information are provided in attachments to this letter. We respectfully urge that all 21 of them detailed here are richly deserving of full and unconditional pardons.

While Biden's prosecutors almost entirely ignored the firebombing and vandalism of hundreds of pro-life churches and pregnancy centers, they viciously pursued pro-life Americans,

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[1] *See, e.g.,* https://www.catholicnewsagency.com/news/258089/trump-condemns-biden-doj-for-targeting-of-catholics-and-pro-life-activists (highlighting the "'many peaceful pro-lifers who Joe Biden has rounded up, sometimes with SWAT teams, and thrown [] in jail,' [President] Trump said. 'Many people are in jail over this. . . . We're going to get that taken care of immediately — [on the] first day.'").

obtaining convictions against them under the federal "FACE Act" (18 U.S.C. § 248) and the Ku Klux Klan Act's "Conspiracy Against Rights" *felony* provisions (18 U.S.C. § 241). But these individuals participated in mere peaceable civil disobedience, in the heralded tradition of the American Civil Rights activists. Peaceable actions like these usually merit, at worst, a minor misdemeanor conviction. And had they been opposing anything *but* abortion, Joe Biden would have given them medals—instead Biden wanted them branded as "convicted felons" and imprisoned for years in a federal penitentiary. We thus respectfully request that you right the wrongs of the Biden DOJ and grant full and unconditional pardons to the following 21 individuals:

Nashville, Tennessee
Case # 3:22-cr-00327
Paul Vaughn
Coleman Boyd
Dennis Green
Eva Edl
James Zastrow
Paul Place
Heather Idoni
Eva Zastrow
Chester Gallagher
Calvin Zastrow

Detroit, Michigan
Case # 2:23-cr-20100
Chester Gallagher
Eva Edl
Eva Zastrow
Joel Curry
Justin Phillips
Heather Idoni
Calvin Zastrow

Washington, D.C.
Case # 1:22-cr-00096
Lauren Handy
Paulette Harlow
Jean Marshall
Joan Bell
John Hinshaw
William Goodman
Heather Idoni
Jonathan Darnel

Long Island, New York
Case # 2:22-cr-00485
Fr. Fidelis Moscinski

Manhattan, New York
Case # 1:22-cr-00684
Bevelyn Beatty Williams

In addition to the unique reasons for pardon included in the 21 attached individual petitions, these advocates' underlying convictions were fatally flawed and plainly unjust for the following reasons:

1. The FACE Act was expressly limited at its enactment, and its prescribed penalties were supposed to be sharply circumscribed—the Biden DOJ thus flagrantly violated Congress's intent in its pursuit of the prosecutions here. Congress was fearful that the FACE Act might be used against protesters who had been employing tactics that were used and celebrated by Dr. Martin Luther King, Jr., even citing Dr. King's Letter from the Birmingham Jail (April, 1963) to that effect. Dr. King and many with him engaged in peaceful sit-ins at lunch counters—an act of simple

trespass—and these pro-life Americans engage in similar sit-ins at abortion facilities. FACE expressly contemplated that group-oriented peaceable civil disobedience, as advocated and practiced by Dr. King and his followers, would be punishable as mere misdemeanors. *See* S-Rep. 103-117 at 2, *7 (1993) (stating that the first purpose is to stop "blockades," explaining that "[t]ypically, dozens of persons … trespass onto clinic property and physically barricade entrances and exits by sitting or lying down or by standing and interlocking their arms"); H.R. Rep. 103-306 at *699, *704 (1993). To assuage concerns of Republicans, who opposed harsh punishment of peaceful pro-life advocates, and to obtain passage of the bill, Sen. Ted Kennedy even gave his express assurance during Congressional debates that, "if an individual does violate this law for the first time, *it is not a felony* . . . ." *Id*. at S. 15668 (emphasis added).

But the Biden DOJ reneged on Kennedy's deal with Republicans, instead charging these peaceable pro-life advocates with serious 10-year felonies, a misuse of provisions of the 19th century KKK Act (18 U.S.C. § 241) against them. This post-Civil War/Reconstruction era law was meant to punish violent terrorism, including lynch mobs, against newly enfranchised Black Americans throughout the Deep South. Using this anti-Klan law against peaceful pro-life Americans is an outrageous affront to justice and tarnishes the legacy of our own Civil Rights Movement, equating mere peaceful civil rights protest with deadly racist violence. Neither the Clinton DOJ nor the Obama DOJ dared use this plainly inapplicable law against pro-life advocates.

2. The conviction and harsh sentencing of these pro-life Americans also flout the clear teaching of the U.S. Supreme Court in its recent ruling in *Fischer v. U.S.*, 603 U.S. 480 (2024), that the scope of a law and its penalties must be assessed by considering both the text of the law and its context. In *Fischer*, the High Court vacated the conviction of a January 6th protester for obstructing or attempting to disrupt an official proceeding, ruling that a broad reading of a statute must be rejected if it would be "novel" and effectively "criminalize a broad swath of prosaic conduct, exposing *activists* and lobbyists alike to decades in prison." *Id.* at 496 (emphasis added). The Supreme Court even highlighted the injustice that "*a peaceful protester could* conceivably be charged under § 1512(c)(2) and *face a 20-year sentence*." *Id*. (emphasis added). Such "peculiar results underscore the implausibility of the Government's [broad] interpretation" *Id*. (cleaned up). "If Congress had wanted to authorize such penalties for *any* conduct that delays or influences a proceeding in any way, it would have said so." *Id*. (emphasis in original). Reading a statute in light of its context "affords proper respect to the prerogatives of Congress," rather than giving deference to rogue prosecutors, "in carrying out the quintessentially legislative act of defining crimes and setting the penalties for them." *Id*. (cleaned up).

Fischer confirms that applying the KKK Act to misdemeanor violations of the FACE Act, even when committed by groups, does violence to the prerogatives of Congress in designing and adopting both statutes, as discussed above. *Accord United States v. DeLaurentis*, 491 F.2d 208, 214 (2d Cir. 1974) (invaliding KKK Act convictions for participating in "organized sit-ins" at hospitals in alleged violation of the National Labor Relations Act, because such a "huge expansion of federal criminal liability . . . would be a shock to the 1870 Congress that enacted section 241" and "to the

1947 Congress that" adopted the NLRA). Here, using the anti-Klan law against peaceful pro-life advocates to ratchet up misdemeanors into serious felonies, or to inflate sentences to harshly excessive lengths of imprisonment, flies in the teeth of *Fischer's* teaching and simple, fundamental notions of justice.

3. Notably, the Supreme Court has required a similar analysis for determining if actions under 42 U.S.C. § 1983 (which Congress adopted only one year after 18 U.S.C. § 241, and which similarly purports to protect any federal "rights" secured by federal "laws") are available to enforce modern rights-creating statutes. *Compare* 18 U.S.C. § 241 (criminalizing conspiracies "to injure, oppress, threaten, or intimidate" another in the exercise of any "right" secured by federal "laws"). But the Supreme Court has denied § 1983's availability if its application would be "incompatib[le]" with "the enforcement scheme" in the newer statute. *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 187 (2023). Critically, such incompatibility exists if allowing a § 1983 action would violate "what Congress intended" in securing "newly created rights," "as divined from [that newer statute's] *text and context*." *Id.* (emphasis added). That is essentially the same analysis for determining the proper scope of a criminal statute under *Fischer*. Thus, it is no answer to say the plain terms of the KKK Act (§ 241) automatically apply to *any* conspiracy to violate *any* federal "right" (setting aside the Act's bar only on conspiracies to *injure, intimidate, oppress, or threaten* another). Rather, piling Civil-War-era felony KKK charges on top of alleged misdemeanor violations of FACE is flatly incompatible with the FACE Act's text and context, as discussed above. Indeed, the Congress that adopted FACE, after a specific compromise *not* to punish peaceful civil disobedience as an automatic felony (or sentence defendants anywhere close to 10 years in prison), even when committed by groups, would almost certainly be shocked at the Biden DOJ's unprecedented effort to do just that after *Dobbs*. Accordingly, the Biden DOJ's effort to flout this design was patently lawless.

4. Even more, the June 2022, ruling of the Supreme Court in *Dobbs v. Jackson Women's Health Organization,* 597 U.S. 215 (2022)—which precipitated the Biden DOJ's witch hunt against these pro-life advocates in the first place—eroded the principal stated purpose of Congress' enactment of the FACE Act, namely, to protect the purported constitutional right to abortion access. But *Dobbs* eclipsed that right as non-existent. Because the reason for the FACE law has ceased to exist, the classic maxim *cessante ratione legis, cessat ipsa lex* is now fully apt here: "when the reason for a law ceases, the law itself ceases."

5. And the FACE Act itself cannot be saved as falling within Congress's Commerce Clause power, because FACE doesn't regulate interstate commerce—it is concerned with local (intrastate) non-economic activity, a protest that obstructs an abortion facility. It does not regulate the abortion facilities themselves; rather, it regulates pro-life protest activity, principally outside abortion facilities. This is non-economic, non-commercial activity. But as the Supreme Court held in *U.S. v. Morrison*, 529 U.S. 598 (2000), "We accordingly reject the argument that Congress may regulate non-economic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and

what is truly local." 529 U.S. at 617-18. If Congress cannot regulate non-economic violent criminal conduct, based solely on its aggregate impact on interstate commerce, then *a fortiori* it cannot regulate non-economic, non-commercial, peaceable conduct of pro-life advocates.

6. Not only is the FACE Act facially unconstitutional, but it is also unconstitutional as applied to these pro-life Americans. While the Biden DOJ zealously hunted down pro-life advocates and prosecuted them to the fullest extent under the law (and beyond), it refused to prosecute almost any of the more than 170 incidents of violence against pro-life pregnancy centers and churches nationwide in the wake of the leak of the *Dobbs* decision, even though pregnancy centers and churches are supposed to be protected under FACE. *See*, *e.g.*, Mary Margaret Olohan, "DOJ's Kristen Clarke: A Pro-Abortion Activist Enforcing the Law Against Pro-Lifers," The Daily Signal, Oct. 26, 2022, https://www.dailysignal.com/2022/10/26/dojs-kristen-clarke-pro-abortion-activist-enforcing-law-pro-lifers/. This is the epitome of First Amendment prohibited content-based selective enforcement based on viewpoint discrimination.

7. Finally, the individuals in the Washington, D.C. case, in particular, were denied a fair trial. Out of a jury pool of roughly 125, only three potential jurors were even nominally pro-life—all three were stricken from the jury by the Biden DOJ. And the D.C. sit-in occurred at a notorious late-term abortion facility, where the pro-life advocates reasonably believed, based on undercover video evidence, that babies who are born alive at that clinic are not treated but instead unlawfully left to die. The trial judge recognized that, if those advocates acted on behalf of those innocent children left to die, their conduct would *not* violate the FACE Act. But then, that same trial judge refused to allow the jury to hear the significant evidence establishing the defense: that such illegality was occurring and that the advocates were motivated by their desire to oppose that illegality.

For these reasons, as well as those set forth in the individual petitions enclosed herewith, we urge that these pro-life Americans are deserving of full and unconditional pardons.

Respectfully submitted,

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Enclosures