



## Background on NOW's Suit to Stop Clinic Violence

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On Wednesday, Nov. 30, at 10 a.m., *Scheidler et al. v. National Organization for Women et al.* and *Operation Rescue et al. v. National Organization for Women et al.* will be argued before the Supreme Court. These cases relate to stopping illegal violence directed against women's health clinics, abortion providers and their patients. The Bush administration's Department of Justice has chosen to oppose NOW and support the positions of Joseph Scheidler and Operation Rescue.

NOW initiated this case nearly 20 years ago in an effort to stop anti-abortion extremists from continuing to plan and organize violence at women's health clinics. The self-described "pro-life Mafia" planned to end abortion by closing every clinic that provided abortion services. Over the past 19 years, the violence has included invasions, violent blockades, arson, chemical attacks and bombings of women's health care clinics, assaults on patients, death threats and shootings of health care workers and administrators, including the murder of eight abortion providers.

This is the third time the Supreme Court will be considering this class action case filed by NOW on behalf of all women who could potentially be patients of the approximately 2,000 health care clinics and by two named clinics representing the class of clinics themselves.

In 1986, after years of increasing violence, a Florida clinic was invaded, equipment smashed, and staff seriously injured. It became clear that action had to be taken to stop the violence before it escalated to murder. Within months, NOW and two reproductive health clinics had sued Joseph Scheidler (author of *CLOSED: 99 Ways to Stop Abortion*), the Pro-Life Action Network (PLAN), and others in an effort to stop their reign of terror across the country. NOW later added Operation Rescue and Randall Terry as defendants, and sought a nationwide injunction under RICO (Racketeer Influenced and Corrupt Organizations Act) based on violations of the Hobbs Act, a federal criminal statute, to stop these organizations from planning, conspiring and urging others to engage in violent acts.

PLAN, Operation Rescue, Scheidler and others challenged NOW's right to bring the case, and argued that the racketeering law did not apply to them because their actions were not motivated by financial gain. NOW responded that racketeering laws designed to stop the Mafia were exactly what was needed to stop the "pro-life Mafia" — thugs who organized others to commit violence against clinics and to intimidate and terrorize patients and health care providers.

In 1994 the U.S. Supreme Court ruled unanimously that an economic motive was not required and that NOW had a right to pursue the racketeering case in federal court. The case was sent back to the lower court for trial.

In 1998, following a seven-week trial in federal court in Chicago, a jury unanimously found 121 violations of law by Scheidler, PLAN, Operation Rescue and others. According to the federal district court judge who presided over the trial, there was enough evidence of illegal acts "to fill up this courtroom." Based on the jury's findings, the judge issued a nationwide injunction to prohibit further violations. This injunction is currently in effect across the United States.

The issuance of the injunction was appealed by Scheidler, PLAN and Operation Rescue, and was upheld by the Seventh Circuit Court of Appeals. The Supreme Court agreed to hear two technical issues, but rejected our opponents' contention that the First Amendment or free speech was ever at issue in these cases.

In the second round, the Supreme Court ruled in 2003 that while anti-abortion groups did commit crimes and interfere with clinic operations, the lower court's injunction could not be supported because no money or property had been obtained from the clinics as a result. The Court also found that 117 of the 121 violations, those related to extortion, did not fall under the Hobbs Act (and therefore could not support a RICO claim) because the clinics' property was not physically taken. However the Court did not rule on the remaining four counts found by the jury — the four acts or threats of violence.

The Supreme Court sent the case back to the Seventh Circuit Court of Appeals for further action, where NOW argued that even if our opponents' acts of extortion were not covered by the Hobbs Act, their acts and threats of physical violence were covered by the plain language of Hobbs, and thus were sufficient to support the RICO verdict. When the Seventh Circuit sent the case back to the lower court to determine these issues, PLAN and Operation Rescue appealed to the Supreme Court, demanding that the injunction be lifted without any further proceeding in any other court.

On Wednesday, the Supreme Court is being asked to decide whether the Hobbs Act does what it says and prohibits violence and threats of violence designed to obstruct interstate commerce, or whether it only prohibits extortion and robbery. In addition, Scheidler, PLAN and Operation Rescue are asking the Court to reopen the question of whether private parties (meaning NOW and the class of women it represents and the class of clinics) can obtain injunctions under the RICO Act.

Respondents' briefs and amicus briefs in this case, including an amicus brief signed by 47 members of Congress in support of the respondents, explain in detail the issues before the Supreme Court, a history of the illegal violence, bombings and murders and other background. The briefs can be found online.

The nationwide injunction has not affected non-violent protest covered under the First Amendment. But it has been successful in decreasing the threats and acts of violence directed at clinics, patients and staff. From 1977 through 1999 (the year our nationwide injunction took effect), the National Abortion Federation (NAF) received reports that 161 women's health care facilities were arsoned and 40 were bombed. In the six years that the injunction has been in effect, NAF reports 12 arsons and one bombing, a dramatic decrease.

In this case before the Supreme Court, PLAN and Operation Rescue are asking that the nationwide injunction be lifted. We believe that removing the injunction would embolden PLAN and its associates to

again start to plan, conspire and organize illegal violence against clinics nationwide and would waste precious law enforcement and judicial resources by forcing clinics, local prosecutors and police to bring individual suits to protect individual facilities.

We also believe that the final ruling by this Supreme Court under the leadership of Chief Justice John Roberts will give us an indication of the direction of the Court on future cases related to stopping violence at abortion clinics and upholding a woman's constitutional rights under the law.

The case is being argued by Erwin Chemerinsky, a Professor and Law and Political Science at Duke University, a preeminent constitutional scholar, First Amendment expert and a former board member of the American Civil Liberties Union. Our legal team working on this case includes: Fay Clayton of Robinson, Curley & Clayton in Chicago, IL, who has represented NOW in the case for over fifteen years, Lowell Sachnoff of Sachnoff & Weaver in Chicago, IL, who represented the clinics at trial, Adam Hirsch, also of Robinson, Curley & Clayton; Paul Hoffman of Schonbrun DeSimone Seplow Harris & Hoffman of Los Angeles, CA; Laurie Levenson of Loyola Law School in Los Angeles, CA; Catherine Fisk of Duke University School of Law in Durham, NC; Jack Block and Casey Westover, also of Sachnoff & Weaver in Chicago, IL; Frank Susman of St. Louis, MO; Steven Gey of Florida State University College of Law in Tallahassee, FL; Jon Eisenberg of Horvitz & Levy in Encino, CA; and NOW President and attorney Kim Gandy.

In addition to the National Organization for Women (NOW), representing the class of all women who might potentially be patients of any women's health clinic, the Respondents in the case include the Delaware Women's Health Organization, the Summit Women's Health Organization and the class of approximately 2000 women's health clinics around the United States. The Feminist Majority Foundation's amicus curiae brief was joined in by Planned Parenthood Federation of America, Inc., Medical Students for Choice, National Abortion Federation, Physicians for Reproductive Choice and Health and the National Coalition of Abortion Providers. When the case was first filed in 1986, Feminist Majority Foundation President Eleanor Smeal was president of NOW.