

Date: October 23, 2020

To: Chief Yvette Gentry, Major Cirillo, Jefferson County Attorney Mike O'Connell, Mayor Gregg Fischer, Councilwoman Barbara Sexton Smith and Council President David James

From: Ms. Ona Marshall and Dr. Ernest Marshall, Owners, EMW Women's Surgical Center, Pat Canon, EMW Legal Observer Coordinator, Laura Landenwiche and Abigail Lewis, Adams, Landenwiche & Walton

Re. Public Health, Safety, and Access Issues Impacting EMW and local businesses

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First, we want to express our gratitude to Major Cirillo and LMPD for preparing the problem analysis regarding EMW protesters. In writing our response memo, we aim to provide more background, context and data to this picture. We also want to share our experience following LMPD's recommendations for mitigation. Finally, we hope to build communication with LMPD and the City of Louisville in order to improve the public health and safety outcomes impacting our district's economic development and image, as well as the staff and community we serve.

#### BACKGROUND

EMW Women's Surgical Center was established in 1981 and has been located at 136 W. Market St. since 1993. Our three physicians are professors at the University of Louisville School of Medicine, board certified in obstetrics and gynecology, and have decades of experience providing a wide range of obstetric and gynecologic care in the Louisville community. Our physicians are on staff at the University of Louisville Hospital and Norton's Hospital and they direct a long acting reversible contraceptive program at the University of Louisville. Since 1981 the University of Louisville and the University of Kentucky have entrusted their residents to train with EMW; this program joined the national Ryan training residency initiative in 2011 and is also directed by our physicians.<sup>1</sup> Thanks to our physicians and staff, EMW is nationally recognized for excellence in medical care and compassion. Our patients are our priority.

Anti-abortion violence, harassment and intimidation are a matter of record in this country and they are on the rise right now. Yesterday, extremists in Washington DC trespassed into a clinic and chained themselves to the waiting area in a brazen "lock and block" maneuver after barricading the door with furniture. Another group in DC invaded a different clinic and disrupted patients and staff. In the two months, extremists invaded and disrupted a New Jersey clinic, blockaded a clinic outside of Detroit, and attempted to burn down a clinic in Florida. From 1980-2018 there have been 11 murders, 26 attempted murders, 54 bombings, 257 arsons, and 4 acts of kidnapping.<sup>2</sup> In 2019, thanks to law enforcement, four different mass shootings planned against clinics across the country were thwarted.<sup>3</sup> Last fall, law enforcement arrested a man in Northern Kentucky building a bomb in

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<sup>1</sup> See the Ryan Residency Training Program's mission and objectives. Retrieved from <https://bit.ly/35lqh3x>.

<sup>2</sup> See FOIA request, Bureau of Alcohol, Tobacco & Firearms; NATIONAL ABORTION FEDERATION, *2018 Violence and Disruption* <https://bit.ly/2JwLEEY>.

<sup>3</sup> See e.g. CBS News. "3 young men arrested for threatening mass shootings against Planned Parenthood". Aug. 22, 2019. <https://cbsn.ws/31qRHng>.

his kitchen to blow up a clinic in Cincinnati.<sup>4</sup> Law enforcement response is essential to preventing severe violence and harassment.

Like the rest of the country, EMW is experiencing an increase in harassment, intimidation, and threats of violence. In January, an unknown armed protester threatened an escort. In February, local protesters announced a new campaign to double down on and shut down EMW after the local Planned Parenthood became licensed. In April, a credible firebomb threat against EMW was posted on social media and investigated by LMPD and the FBI. Protesters have become emboldened during the pandemic and because most refuse to wear facial coverings or practice social distancing, they are creating a potentially deadly gauntlet every day outside our doors.

This year, according to our legal observers, protesters have a) assaulted or battered 122 individuals on the public sidewalks and alley surrounding our facility, engaging in unwanted touching to shoving, or placing individuals in fear of unwanted touching or physical injury, b) followed and harassed 96 patients and their companions, c) trespassed onto clinic property 249 times in the front (Market Street) and back (alley entrance), and d) obstructed and significantly interfered with the public sidewalk, passenger loading zone, front entrance and parking lot entrance to EMW on 174 occasions. We made 22 calls to LMPD for harassment, obstruction, and noise complaints. Since the Governor's mask and social distancing mandate went into effect in July, we filed over 64 reports of non-compliance.

EMW has experienced anti-choice harassment and intimidation for decades, but 2017 was a turning point. That year we became the only abortion clinic left in Kentucky, and national anti-abortion extremist group Operation Save America (OSA) announced plans to target EMW with a national protest in July. Two months before the national event, OSA's director and 10 other OSA followers blockaded EMW's entrance.<sup>5</sup> They were arrested and charged with violating the Freedom of Access to Clinic Entrances (FACE) Act by the US Attorney for the Western District of Kentucky.

Because OSA threatened to "CRUSH FACE" after the blockade, the Department of Justice filed for and won injunctive relief creating a temporary safety zone for patients and staff to enter EMW during their national protest.<sup>6</sup> Over 200-300 extremists from across the country participated in OSA's demonstrations that July targeting EMW and our physicians and clinic director at their homes, neighborhoods, and the University of Louisville; protesters also distributed WANTED-style flyers featuring physician names, photographs, and home addresses

Thanks to the federal safety zone, US Marshals, LMPD, and clinic escorts, EMW was not blockaded again. But the damage was done. OSA radicalized their regional partners P82 and other local groups and individuals. Louisville is now a frequent destination for national extremists. In September, two OSA extremists traveled all the way to Louisville for a victory lap outside EMW's doors to intimidate staff and escorts; two weeks earlier they had blockaded a Detroit-area clinic. Both were arrested for blockading EMW in 2017.

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<sup>4</sup> Fox19.com. "Judge: NKY man threatened to blow up Planned Parenthood". Sept. 19, 2019. Retrieved from <https://bit.ly/3kna18k>.

<sup>5</sup> AP News. "US abortion clinics face surge of trespassing and blockades". May 7, 2018. Retrieved from <https://bit.ly/3oh4uTp>.

<sup>6</sup> Courier Journal. "Judge grants temporary buffer zone outside Louisville abortion clinic...". July 21, 2017. Retrieved from <https://bit.ly/3kiYNRX>.

## AREAS OF ONGOING CONCERN

1. **COVID 19:** Aggressive protesters who refuse to wear face masks or practice social distancing are a significant ***threat to public health and safety*** in Louisville. Patients, staff, volunteer escorts and pedestrians alike to fear imminent harm from individuals without face coverings who accost, crowd, yell at, sing to and confront them at close range.. These are all activities that increase aerosol emissions and substantially increase the risk of viral transmission.<sup>7</sup> Protesters target patients, medical students, residents and staff using these tactics every day outside EMW. This conduct is disorderly and in violation of Governor Beshear's Executive Order requiring face coverings and physical distancing in public outdoor spaces.<sup>8</sup> EMW seems to be trapped in no man's land when it comes to enforcement of the Governor's order. When we report violations to the Health Department, they instruct us to report to LMPD for enforcement. When we report violations to LMPD, we are told LMPD is not able to enforce the order because they are not enforcing it at other demonstrations.

Unlike other marches or demonstrations where individuals may choose to participate, EMW patients and staff have no choice but to risk exposure every day in order to obtain or provide constitutionally protected, essential medical care. These ongoing violations increase the likelihood of community spread of COVID-19, at a time when infection rates are once again surging in Kentucky.<sup>9</sup>

2. **Harassment, unwanted following in a public place, Interference on Public Sidewalks, assault and battery:** Protesters frequently obstruct and interfere with the free flow of pedestrian traffic on public sidewalks along Market Street, especially the clinic entrance and loading zone area, as well as 2<sup>nd</sup> Street and the alley. Protesters also interfere with and obstruct the flow of vehicular traffic on Market Street, especially the loading zone area, and the alley behind EMW where our secured parking lot is as well as a public parking lot.

Patients and their companions are routinely berated, taunted, and followed at close range for hundreds of feet from the parking structure off the back alley to the front door of EMW and back again. Unwanted touching, assault and battery are all too common. One group of protesters wears green vests to deceive and confuse patients. (Clinic escorts wear orange vests.) Pedestrians, not to mention patients, are often forced to thread the needle through and around a gauntlet of protesters; many cross the street to avoid the area. To downtown business patrons, tourists, patients and pedestrians alike the public right of way appears frightening and under siege.

Protester conduct poses a threat to patients and the public – and to themselves. On several occasions, protesters have been punched or shoved by patients or companions defending themselves or acting out in response to outrageous taunts.

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<sup>7</sup> Lea Hamner, et. al. *High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice*. CENTERS FOR DISEASE CONTROL AND PREVENTION. May 15, 2020. Retrieved from <https://bit.ly/2ISPyKN>.

<sup>8</sup> Executive Order 2020-750, Gov. Andy Beshear. Sept. 4, 2020. <https://bit.ly/34jmbcQ>. Extended by Governor Oct. 6, 2020,

<sup>9</sup> WLKY.com. "Kentucky's Mask Mandate Sticking Around Amid Another Covid-19 Escalation". Oct. 6, 2020.

Kentucky and Louisville laws address this conduct and prohibit it. Relevant laws prohibit groups of people or individuals from following and harassing individuals or disrupting the flow of pedestrian or vehicular traffic on public sidewalks, rights-of-way, roads and alleys. For example, under Ky. Rev. Stat. Ann Sec. 525.070 governing **Harassment**, “A person is guilty of harassment when with intent to intimidate, harass... [when] he or she *...follows a person in or about a public place or places.*” Under Louisville Ord. 132.03 governing **Disorderly Conduct**, “No person, with the intent to harass, annoy or alarm another person shall: Follow a person in or about a public place or places.” Under Louisville Ord. Sec. 97.073 governing **Blocking Sidewalks**, “It shall be unlawful for any person in or on any sidewalk...to make any speech or harangue; ... to display any signs, device... exhibition in consequence of which there is caused or created such a gathering of person on the sidewalk as to interfere with pedestrian traffic thereon.”

- 3. Unreasonably Loud Noise:** Each week protesters use large amplified sound systems with speakers mounted on tripods with wires in the public right-of-way, as well as portable amplified sound systems to harass patients, staff, volunteer escorts, and the public. The large speakers are typically placed just a few feet from the glass window to EMW’s patient waiting room in order to blast patients and staff. The noise disrupts area businesses and disturbs the peace. A-Loft Hotel patrons, tourists and others complain about the noise. And there are plans for a hotel to be built across the street from EMW.

A recent Open Records Request demonstrates LMPD has issued hundreds of citations sound ordinance violations throughout Louisville –but there has never been a citation issued at EMW/136 Market Street in spite of dozens of noise complaints made to LMPD,(Louisville Ord. Sec. 99.02 governing **Noise**.)

- 4. Objects in the Right of Way -Signage, Speaker Systems, etc.:** Protesters routinely fasten graphic and offensive signs to the fire hydrants, meters, and other public fixtures in the passenger loading zone and area directly in front of the entrance to EMW. As discussed above, protesters set up large ungainly amplified systems with speakers, and wires in the public sidewalk right of way. Many bring chairs and sit near or in front of EMW’s entrance, in the right of way. Some of these objects are hazardous, create a public nuisance, and contribute to a sense of lawlessness on Market Street. There are ordinances that appear to address this, e.g. Ky. Rev. Stat. Sec. 512.080 **Unlawful Advertisements**, “a person is guilty of unlawfully posting advertisements, when having no right to do so... he...otherwise affixes ...to the public property any advertisement, poster,...” Louisville Metro Ord. Sec. 155.23 **Signs** “No sign regulated shall be allowed to be placed within the public right-of-way...”

#### EMW Pursued Mitigation Recommendations, Most Proved Impracticable

- 1. Security Guards**—EMW hired private security guards to help protect the clinic April to August 2020. These highly trained guards were unable to prevent aggressive protesters from interfering with, harassing, obstructing, haranguing, touching and in some cases

battering patients, staff or pedestrians. Security guards are not in a position to enforce city and state laws on public property. LMPD was called more if not less during this time.

2. **Rear Entry Option**– Due to security concerns, the Department of Justice reviewed *and rejected* the rear entrance as an alternative entrance for patients during OSA’s national protest. National clinic security experts also advised against using the rear entrance: physicians are most vulnerable to attack in unsecured parking lots where two doctors have been shot and killed. When our front entrance was damaged following civil unrest this June, we briefly routed patients through the back. Protesters repeatedly obstructed the alley and the entrance to EMW’s parking lot. Because the alley is less visible to the public - and police, protesters behaved with even greater disregard for the rule of law. It was chaotic, more dangerous for staff, and LMPD had to be called repeatedly. Using the rear entrance for patients is not practicable or safe.
3. **LMPD video/extensive video surveillance**–EMW has extensive video surveillance system and LMPD has had continuous access to this system since 2017.
4. **Patients rarely if ever want to file a complaint or call the police against the protesters**, even when they have suffered an egregious assault or battery. Patients are primarily focused on the medical care they need and their desire for privacy and peace.

#### CONCLUSION

We are grateful for the Department’s time and attention, and we would welcome the opportunity to in person or via zoom with you, Major Cirillo, Jefferson County Attorney O’Connell and city council members to open the lines of communication more directly. We would like to urge the Department to consider assigning plain clothes officers to observe and evaluate the unmasked aggression, noise levels, obstruction, and harassment of our patients and staff, especially on Saturdays. We would also like to request a liaison within the Department, possibly a detective assigned to extremist groups, with whom we are able to check in with and share concerns and information. And we hope LMPD will explore more community-based policing options for our area, whereby officers engage in foot patrols and communicate with demonstrators and escorts alike to build relationships and trust. EMW, our patients, staff and the Louisville community as a whole are reliant upon the City to protect public health and safety by enforcing statewide orders and generally applicable laws. For some time now, our district on Market street has felt abandoned and often chaotic, in spite of our proximity to an LMPD office. We welcome your counsel, suggestions and communication, and look forward to working together to address these concerns.