

115TH CONGRESS
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H. R. 1322

To protect a woman's right and ability to determine whether and when to bear a child or end a pregnancy by limiting restrictions on the provision of abortion services.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2017

Ms. JUDY CHU of California (for herself, Ms. ADAMS, Mr. AGUILAR, Mrs. BEATTY, Mr. BERA, Mr. BEYER, Mr. BLUMENAUER, Ms. BONAMICI, Mr. BRADY of Pennsylvania, Ms. BROWNLEY of California, Mrs. BUSTOS, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CICILLINE, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. COHEN, Mr. DANNY K. DAVIS of Illinois, Mr. DEFAZIO, Ms. DEGETTE, Ms. DELAURO, Mr. DEUTCH, Mr. DOGGETT, Mr. ELLISON, Mr. ENGEL, Mr. EVANS, Mr. FOSTER, Ms. FRANKEL of Florida, Ms. FUDGE, Mr. GALLEGO, Mr. GARAMENDI, Mr. GRIJALVA, Mr. GUTIÉRREZ, Ms. HANABUSA, Mr. HASTINGS, Mr. HECK, Mr. HIGGINS of New York, Mr. HIMES, Ms. NORTON, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. KEATING, Ms. KELLY of Illinois, Mr. KENNEDY, Mr. KIHUEN, Mr. KILDEE, Mr. KRISHNAMOORTHY, Mr. LARSEN of Washington, Mrs. LAWRENCE, Ms. LEE, Mr. LEVIN, Mr. TED LIEU of California, Mr. LOWENTHAL, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. SEAN PATRICK MALONEY of New York, Ms. MCCOLLUM, Ms. KUSTER of New Hampshire, Mr. MCNERNEY, Mr. MEEKS, Mr. MOULTON, Mr. NADLER, Mrs. NAPOLITANO, Mr. NORCROSS, Mr. O'ROURKE, Mr. PAYNE, Mr. PETERS, Ms. PINGREE, Mr. POCAN, Mr. PRICE of North Carolina, Mr. QUIGLEY, Miss RICE of New York, Mr. RICHMOND, Ms. ROSEN, Mr. RUSH, Mr. RYAN of Ohio, Ms. SÁNCHEZ, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. DAVID SCOTT of Georgia, Mr. SERRANO, Ms. SINEMA, Ms. SLAUGHTER, Mr. SMITH of Washington, Mr. SOTO, Ms. SPEIER, Mr. TAKANO, Ms. TITUS, Mr. TONKO, Mrs. TORRES, Ms. TSONGAS, Mr. VARGAS, Mr. VEASEY, Ms. VELÁZQUEZ, Mr. WALZ, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Mr. WELCH, Mr. YARMUTH, Ms. DELBENE, Mr. CONNOLLY, and Mrs. DAVIS of California) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To protect a woman’s right and ability to determine whether and when to bear a child or end a pregnancy by limiting restrictions on the provision of abortion services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Women’s Health Pro-
5 tection Act of 2017”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Access to safe, legal abortion services is es-
9 sential to women’s health and central to women’s
10 ability to participate equally in the economic and so-
11 cial life of the United States.

12 (2) Access to safe, legal abortion services has
13 been hindered in the United States in various ways,
14 including blockades of health care facilities and asso-
15 ciated violence; restrictions on insurance coverage;
16 restrictions on minors’ ability to obtain services; and
17 unnecessary health regulations that single out abor-
18 tion providers and those seeking their services, and
19 which do not confer any health benefit or further the
20 safety of abortion, but harm women by reducing the
21 availability of services.

1 (3) In the early 1990s, protests and blockades
2 at health care facilities where abortions were per-
3 formed, and associated violence, increased dramati-
4 cally and reached crisis level, requiring Congres-
5 sional action. Congress passed the Freedom of Ac-
6 cess to Clinic Entrances Act (Public Law 103–259)
7 to address that situation and ensure that women
8 could physically access abortion services.

9 (4) Since 2010, there has been an equally dra-
10 matic increase in the number of laws and regulations
11 singling out abortion that threaten women’s health
12 and burden their access to safe abortion services by
13 interfering with health care professionals’ ability to
14 provide such services. The Supreme Court’s decision
15 in *Whole Woman’s Health v. Hellerstedt* (579 U.S.
16 _____, (2016)), reaffirmed the constitutional right
17 to abortion and struck down two unnecessary health
18 regulations that created undue burdens upon access
19 to abortion. Congressional action is necessary to put
20 an end to these types of harmful restrictions. In ad-
21 dition, there has been a dramatic increase in the
22 passage of laws that blatantly violate the constitu-
23 tional protections afforded women, such as bans on
24 abortion prior to viability.

1 (5) Legal abortion is one of the safest medical
2 procedures in the United States, safer than numer-
3 ous procedures that take place outside of hospitals,
4 as noted by the Supreme Court in *Whole Woman’s*
5 *Health*. That safety is furthered by regulations that
6 are based on medical science and are generally appli-
7 cable to the medical profession or to medically com-
8 parable procedures.

9 (6) Many State and local governments are im-
10 posing restrictions on the provision of abortion that
11 are neither evidence-based nor generally applicable
12 to the medical profession or to medically comparable
13 procedures. Though described by their proponents as
14 health and safety regulations, many of these abor-
15 tion-specific restrictions do not confer any health
16 benefit. Also, these restrictions interfere with wom-
17 en’s personal and private medical decisions, make
18 access to abortion more difficult and costly, and
19 even make it impossible for some women to obtain
20 those services.

21 (7) These restrictions harm women’s health by
22 reducing access not only to abortion services but also
23 to the other essential health care services offered by
24 the providers targeted by the restrictions, including
25 contraceptive services, which reduce unintended

1 pregnancies and thus abortions, and screenings for
2 cervical cancer and sexually transmitted infections.
3 These harms fall especially heavily on low-income
4 women, women of color, immigrants, and women liv-
5 ing in rural and other medically underserved areas.

6 (8) The cumulative effect of these numerous re-
7 strictions has been to make a woman’s ability to ex-
8 ercise her constitutional rights dependent on the
9 State in which she lives. Federal legislation putting
10 a stop to harmful restrictions throughout the United
11 States is necessary to ensure that women in all
12 States have meaningful access to safe abortion serv-
13 ices, a constitutional right repeatedly affirmed by
14 the United States Supreme Court, most recently in
15 2016.

16 (9) Congress has the authority to protect wom-
17 en’s ability to access abortion services pursuant to
18 its powers under the Commerce Clause and its pow-
19 ers under section 5 of the Fourteenth Amendment to
20 the Constitution to enforce the provisions of section
21 1 of the Fourteenth Amendment.

22 (b) PURPOSE.—It is the purpose of this Act to pro-
23 tect women’s health by ensuring that abortion services will
24 continue to be available and that abortion providers are
25 not singled out for medically unnecessary restrictions that

1 burden women by preventing them from accessing safe
2 abortion services. It is not the purpose of this Act to ad-
3 dress all obstacles in the path of women who seek access
4 to abortion (for example, this Act does not apply to clinic
5 violence, restrictions on insurance or medical assistance
6 coverage of abortion, or requirements for parental consent
7 or notification before a minor may obtain an abortion)
8 which Congress should address through separate legisla-
9 tion as appropriate.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) **ABORTION.**—The term “abortion” means
13 any medical treatment, including the prescription of
14 medication, intended to cause the termination of a
15 pregnancy except for the purpose of increasing the
16 probability of a live birth, to remove an ectopic preg-
17 nancy, or to remove a dead fetus.

18 (2) **ABORTION PROVIDER.**—The term “abortion
19 provider” means a health care professional who per-
20 forms abortions.

21 (3) **GOVERNMENT.**—The term “government”
22 includes a branch, department, agency, instrumen-
23 tality, or individual acting under color of law of the
24 United States, a State, or a subdivision of a State.

1 (4) HEALTH CARE PROFESSIONAL.—The term
2 “health care professional” means a licensed medical
3 professional (including physicians, certified nurse-
4 midwives, nurse practitioners, and physician assist-
5 ants) who is competent to perform abortions based
6 on clinical training.

7 (5) MEDICALLY COMPARABLE PROCEDURES.—
8 The term “medically comparable procedures” means
9 medical procedures that are similar in terms of risk,
10 complexity, duration, or the degree of sterile pre-
11 caution that is indicated.

12 (6) PREGNANCY.—The term “pregnancy” refers
13 to the period of the human reproductive process be-
14 ginning with the implantation of a fertilized egg.

15 (7) STATE.—The term “State” includes each of
16 the 50 States, the District of Columbia, the Com-
17 monwealth of Puerto Rico, and each territory or pos-
18 session of the United States.

19 (8) VIABILITY.—The term “viability” means
20 the point in a pregnancy at which, in the good-faith
21 medical judgment of the treating health care profes-
22 sional, based on the particular facts of the case be-
23 fore her or him, there is a reasonable likelihood of
24 sustained fetal survival outside the uterus with or
25 without artificial support.

1 **SEC. 4. PROHIBITED MEASURES AND ACTIONS.**

2 (a) GENERAL PROHIBITIONS.—The following limita-
3 tions or requirements are unlawful and shall not be im-
4 posed or applied by any government because they single
5 out the provision of abortion services for restrictions that
6 are more burdensome than those restrictions imposed on
7 medically comparable procedures, they do not significantly
8 advance women’s health or the safety of abortion services,
9 and they make abortion services more difficult to access:

10 (1) A requirement that a medical professional
11 perform specific tests or medical procedures in con-
12 nection with the provision of an abortion, unless
13 generally required for the provision of medically
14 comparable procedures.

15 (2) A requirement that the same clinician who
16 performs a patient’s abortion also perform specified
17 tests, services or procedures prior to or subsequent
18 to the abortion.

19 (3) A limitation on an abortion provider’s abil-
20 ity to prescribe or dispense drugs based on current
21 evidence-based regimens or her or his good-faith
22 medical judgment, other than a limitation generally
23 applicable to the medical profession.

24 (4) A limitation on an abortion provider’s abil-
25 ity to provide abortion services via telemedicine,

1 other than a limitation generally applicable to the
2 provision of medical services via telemedicine.

3 (5) A requirement or limitation concerning the
4 physical plant, equipment, staffing, or hospital
5 transfer arrangements of facilities where abortions
6 are performed, or the credentials or hospital privi-
7 leges or status of personnel at such facilities, that is
8 not imposed on facilities or the personnel of facilities
9 where medically comparable procedures are per-
10 formed.

11 (6) A requirement that, prior to obtaining an
12 abortion, a patient make one or more medically un-
13 necessary in-person visits to the provider of abortion
14 services or to any individual or entity that does not
15 provide abortion services.

16 (7) A requirement or limitation that prohibits
17 or restricts medical training for abortion procedures,
18 other than a requirement or limitation generally ap-
19 plicable to medical training for medically comparable
20 procedures.

21 (b) OTHER PROHIBITED MEASURES OR ACTIONS.—

22 (1) IN GENERAL.—A measure or action that
23 applies to and restricts the provision of abortion
24 services or the facilities that provide abortion serv-
25 ices that is similar to any of the prohibited limita-

1 tions or requirements described in subsection (a)
2 shall be unlawful if such measure or action singles
3 out abortion services or make abortion services more
4 difficult to access and does not significantly advance
5 women’s health or the safety of abortion services.

6 (2) PRIMA FACIE CASE.—To make a prima
7 facie showing that a measure or action is unlawful
8 under paragraph (1) a plaintiff shall demonstrate
9 that the measure or action involved—

10 (A) singles out the provision of abortion
11 services or facilities in which abortion services
12 are performed; or

13 (B) impedes women’s access to abortion
14 services based on one or more of the factors de-
15 scribed in paragraph (3).

16 (3) FACTORS.—Factors for a court to consider
17 in determining whether a measure or action impedes
18 access to abortion services for purposes of paragraph
19 (2)(B) include the following:

20 (A) Whether the measure or action inter-
21 feres with an abortion provider’s ability to pro-
22 vide care and render services in accordance with
23 her or his good-faith medical judgment.

1 (B) Whether the measure or action is rea-
2 sonably likely to delay some women in accessing
3 abortion services.

4 (C) Whether the measure or action is rea-
5 sonably likely to directly or indirectly increase
6 the cost of providing abortion services or the
7 cost for obtaining abortion services (including
8 costs associated with travel, childcare, or time
9 off work).

10 (D) Whether the measure or action re-
11 quires, or is reasonably likely to have the effect
12 of necessitating, a trip to the offices of the
13 abortion provider that would not otherwise be
14 required.

15 (E) Whether the measure or action is rea-
16 sonably likely to result in a decrease in the
17 availability of abortion services in the State.

18 (F) Whether the measure or action im-
19 poses criminal or civil penalties that are not im-
20 posed on other health care professionals for
21 comparable conduct or failure to act or that are
22 harsher than penalties imposed on other health
23 care professionals for comparable conduct or
24 failure to act.

1 (G) The cumulative impact of the measure
2 or action combined with other new or existing
3 requirements or restrictions.

4 (4) DEFENSE.—A measure or action shall be
5 unlawful under this subsection upon making a prima
6 facie case (as provided for under paragraph (2)), un-
7 less the defendant establishes, by clear and con-
8 vincing evidence, that—

9 (A) the measure or action significantly ad-
10 vances the safety of abortion services or the
11 health of women; and

12 (B) the safety of abortion services or the
13 health of women cannot be advanced by a less
14 restrictive alternative measure or action.

15 (c) OTHER PROHIBITIONS.—The following restric-
16 tions on the performance of abortion are unlawful and
17 shall not be imposed or applied by any government:

18 (1) A prohibition or ban on abortion prior to
19 fetal viability, including a prohibition, ban, or re-
20 striction on a particular abortion procedure, subject
21 to subsection (d).

22 (2) A prohibition on abortion after fetal viabil-
23 ity when, in the good-faith medical judgment of the
24 treating physician, continuation of the pregnancy

1 would pose a risk to the pregnant woman's life or
2 health.

3 (3) A restriction that limits a pregnant wom-
4 an's ability to obtain an immediate abortion when a
5 health care professional believes, based on her or his
6 good-faith medical judgment, that delay would pose
7 a risk to the woman's health.

8 (4) A measure or action that prohibits or re-
9 stricts a woman from obtaining an abortion prior to
10 fetal viability based on her reasons or perceived rea-
11 sons or that requires a woman to state her reasons
12 before obtaining an abortion prior to fetal viability.

13 (d) LIMITATION.—The provisions of this Act shall
14 not apply to laws regulating physical access to clinic en-
15 trances, requirements for parental consent or notification
16 before a minor may obtain an abortion, insurance or med-
17 ical assistance coverage of abortion, or the procedure de-
18 scribed in section 1531(b)(1) of title 18, United States
19 Code.

20 (e) EFFECTIVE DATE.—This Act shall apply to gov-
21 ernment restrictions on the provision of abortion services,
22 whether statutory or otherwise, whether they are enacted
23 or imposed prior to or after the date of enactment of this
24 Act.

1 **SEC. 5. LIBERAL CONSTRUCTION.**

2 (a) LIBERAL CONSTRUCTION.—In interpreting the
3 provisions of this Act, a court shall liberally construe such
4 provisions to effectuate the purposes of the Act.

5 (b) RULE OF CONSTRUCTION.—Nothing in this Act
6 shall be construed to authorize any government to inter-
7 fere with a woman’s ability to terminate her pregnancy,
8 to diminish or in any way negatively affect a woman’s con-
9 stitutional right to terminate her pregnancy, or to displace
10 any other remedy for violations of the constitutional right
11 to terminate a pregnancy.

12 **SEC. 6. ENFORCEMENT.**

13 (a) ATTORNEY GENERAL.—The Attorney General
14 may commence a civil action for prospective injunctive re-
15 lief on behalf of the United States against any government
16 official that is charged with implementing or enforcing any
17 restriction that is challenged as unlawful under this Act.

18 (b) PRIVATE RIGHT OF ACTION.—

19 (1) IN GENERAL.—Any individual or entity ag-
20 grieved by an alleged violation of this Act may com-
21 mence a civil action for prospective injunctive relief
22 against the government official that is charged with
23 implementing or enforcing the restriction that is
24 challenged as unlawful under this Act.

25 (2) FACILITY OR PROFESSIONAL.—A health
26 care facility or medical professional may commence

1 an action for prospective injunctive relief on behalf
2 of the facility's or professional's patients who are or
3 may be adversely affected by an alleged violation of
4 this Act.

5 (c) **EQUITABLE RELIEF.**—In any action under this
6 section, the court may award appropriate equitable relief,
7 including temporary, preliminary, or permanent injunctive
8 relief.

9 (d) **COSTS.**—In any action under this section, the
10 court shall award costs of litigation, as well as reasonable
11 attorney fees, to any prevailing plaintiff. A plaintiff shall
12 not be liable to a defendant for costs in an action under
13 this section.

14 (e) **JURISDICTION.**—The district courts of the United
15 States shall have jurisdiction over proceedings commenced
16 pursuant to this section and shall exercise the same with-
17 out regard to whether the party aggrieved shall have ex-
18 hausted any administrative or other remedies that may be
19 provided for by law.

20 **SEC. 7. PREEMPTION.**

21 No State or subdivision thereof shall enact or enforce
22 any law, rule, regulation, standard, or other provision hav-
23 ing the force and effect of law that conflicts with any pro-
24 vision of this Act.

1 **SEC. 8. SEVERABILITY.**

2 If any provision of this Act, or the application of such
3 provision to any person or circumstance, is held to be un-
4 constitutional, the remainder of this Act, or the applica-
5 tion of such provision to all other persons or cir-
6 cumstances, shall not be affected thereby.

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