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To protect a person's ability to determine whether to continue or end a pregnancy, and to protect a health care provider's ability to provide abortion services.

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2021

Mr. BLUMENTHAL (for himself, Ms. BALDWIN, Mrs. SHAHEEN, Mr. MARKEY, Mr. KING, Ms. WARREN, Mr. BROWN, Ms. CORTEZ MASTO, Mr. REED, Mr. SCHUMER, Ms. SMITH, Mr. SCHATZ, Mrs. MURRAY, Mr. MENENDEZ, Ms. HASSAN, Mr. WYDEN, Ms. KLOBUCHAR, Mr. MERKLEY, Mr. BOOKER, Ms. STABENOW, Ms. SINEMA, Mr. CARDIN, Mr. MURPHY, Mr. WHITEHOUSE, Mrs. FEINSTEIN, Ms. HIRONO, Mrs. GILLIBRAND, Ms. DUCKWORTH, Ms. CANTWELL, Ms. ROSEN, Mr. VAN HOLLEN, Mr. SANDERS, Mr. CARPER, Mr. BENNET, Mr. WARNER, Mr. PADILLA, Mr. COONS, Mr. DURBIN, Mr. KAINE, Mr. HEINRICH, Mr. LEAHY, Mr. TESTER, Mr. HICKENLOOPER, Mr. PETERS, Mr. LUJÁN, Mr. KELLY, Mr. OSSOFF, and Mr. WARNOCK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect a person's ability to determine whether to continue or end a pregnancy, and to protect a health care provider's ability to provide abortion services.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Women’s Health Pro-
3 tection Act of 2021”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

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

6 (1) Abortion services are essential health care
7 and access to those services is central to people’s
8 ability to participate equally in the economic and so-
9 cial life of the United States. Abortion access allows
10 people who are pregnant to make their own decisions
11 about their pregnancies, their families, and their
12 lives.

13 (2) Since 1973, the Supreme Court repeatedly
14 has recognized the constitutional right to terminate
15 a pregnancy before fetal viability, and to terminate
16 a pregnancy after fetal viability where it is nec-
17 essary, in the good-faith medical judgment of the
18 treating health care professional, for the preserva-
19 tion of the life or health of the person who is preg-
20 nant.

21 (3) Nonetheless, access to abortion services has
22 been obstructed across the United States in various
23 ways, including blockades of health care facilities
24 and associated violence, prohibitions of, and restric-
25 tions on, insurance coverage; parental involvement
26 laws (notification and consent); restrictions that

1 shame and stigmatize people seeking abortion serv-
 2 ices; and medically unnecessary regulations that nei-
 3 ther confer any health benefit nor further the safety
 4 of abortion services, but which harm people by de-
 5 laying, complicating access to, and reducing the
 6 availability of, abortion services.

7 (4) Reproductive Justice requires every indi-
 8 vidual to have the right to make their own decisions
 9 about having children regardless of their cir-
 10 cumstances and without interference and discrimina-
 11 tion. Reproductive Justice is a human right that can
 12 and will be achieved when all people, regardless of
 13 actual or perceived race, color, national origin, immi-
 14 gration status, sex (including gender identity, sex
 15 stereotyping, or sexual orientation), age, or disability
 16 status have the economic, social, and political power
 17 and resources to define and make decisions about
 18 their bodies, health, sexuality, families, and commu-
 19 nities in all areas of their lives, with dignity and
 20 self-determination.

21 (5) Reproductive Justice seeks to address re-
 22 strictions on reproductive health, including abortion,
 23 that perpetuate systems of oppression, lack of bodily
 24 autonomy, white supremacy, and anti-Black racism.
 25 This violent legacy has manifested in policies includ-

ing enslavement, rape, and experimentation on Black women; forced sterilizations; medical experimentation on low-income women's reproductive systems; and the forcible removal of Indigenous children. Access to equitable reproductive health care, including abortion services, has always been deficient in the United States for Black, Indigenous, and other People of Color (BIPOC) and their families.

(6) The legacy of restrictions on reproductive health, rights, and justice is not a dated vestige of a dark history. Presently, the harms of abortion-specific restrictions fall especially heavily on people with low incomes, BIPOC, immigrants, young people, people with disabilities, and those living in rural and other medically underserved areas. Abortion-specific restrictions are even more compounded by the ongoing criminalization of people who are pregnant, including those who are incarcerated, living with HIV, or with substance-use disorders. These communities already experience health disparities due to social, political, and environmental inequities, and restrictions on abortion services exacerbate these harms. Removing medically unjustified restrictions on abortion services would constitute one important step on the path toward realizing Reproductive Justice by

1 ensuring that the full range of reproductive health
2 care is accessible to all who need it.

3 (7) Abortion-specific restrictions are a tool of
4 gender oppression, as they target health care serv-
5 ices that are used primarily by women. These pater-
6 nalistic restrictions rely on and reinforce harmful
7 stereotypes about gender roles, women’s decision-
8 making, and women’s need for protection instead of
9 support, undermining their ability to control their
10 own lives and well-being. These restrictions harm the
11 basic autonomy, dignity, and equality of women, and
12 their ability to participate in the social and economic
13 life of the Nation.

14 (8) The terms “woman” and “women” are used
15 in this bill to reflect the identity of the majority of
16 people targeted and affected by restrictions on abor-
17 tion services, and to address squarely the targeted
18 restrictions on abortion, which are rooted in misog-
19 ny. However, access to abortion services is critical
20 to the health of every person capable of becoming
21 pregnant. This Act is intended to protect all people
22 with the capacity for pregnancy—cisgender women,
23 transgender men, non-binary individuals, those who
24 identify with a different gender, and others—who

1 are unjustly harmed by restrictions on abortion serv-
2 ices.

3 (9) Since 2011, States and local governments
4 have passed nearly 500 restrictions singling out
5 health care providers who offer abortion services,
6 interfering with their ability to provide those services
7 and the patients' ability to obtain those services.

8 (10) Many State and local governments have
9 imposed restrictions on the provision of abortion
10 services that are neither evidence-based nor gen-
11 erally applicable to the medical profession or to
12 other medically comparable outpatient gynecological
13 procedures, such as endometrial ablations, dilation
14 and curettage for reasons other than abortion,
15 hysteroscopies, loop electrosurgical excision proce-
16 dures, or other analogous non-gynecological proce-
17 dures performed in similar outpatient settings in-
18 cluding vasectomy, sigmoidoscopy, and colonoscopy.

19 (11) Abortion is essential health care and one
20 of the safest medical procedures in the United
21 States. An independent, comprehensive review of the
22 state of science on the safety and quality of abortion
23 services, published by the National Academies of
24 Sciences, Engineering, and Medicine in 2018, found
25 that abortion in the United States is safe and effec-

1 tive and that the biggest threats to the quality of
2 abortion services in the United States are State reg-
3 ulations that create barriers to care. These abortion-
4 specific restrictions conflict with medical standards
5 and are not supported by the recommendations and
6 guidelines issued by leading reproductive health care
7 professional organizations including the American
8 College of Obstetricians and Gynecologists, the Soci-
9 ety of Family Planning, the National Abortion Fed-
10 eration, the World Health Organization, and others.

11 (12) Many abortion-specific restrictions do not
12 confer any health or safety benefits. Instead, these
13 restrictions have the purpose and effect of unduly
14 burdening people's personal and private medical de-
15 cisions to end their pregnancies by making access to
16 abortion services more difficult, invasive, and costly,
17 often forcing people to travel significant distances
18 and make multiple unnecessary visits to the pro-
19 vider, and in some cases, foreclosing the option alto-
20 gether. For example, a 2018 report from the Univer-
21 sity of California San Francisco's Advancing New
22 Standards in Reproductive Health research group
23 found that in 27 cities across the United States,
24 people have to travel more than 100 miles in any di-
25 rection to reach an abortion provider.

1 (13) An overwhelming majority of abortions in
2 the United States are provided in clinics, not hos-
3 pitals, but the large majority of counties throughout
4 the United States have no clinics that provide abor-
5 tion.

6 (14) These restrictions additionally harm peo-
7 ple's health by reducing access not only to abortion
8 services but also to other essential health care serv-
9 ices offered by many of the providers targeted by the
10 restrictions, including—

11 (A) screenings and preventive services, in-
12 cluding contraceptive services;

13 (B) testing and treatment for sexually
14 transmitted infections;

15 (C) LGBTQ health services; and

16 (D) referrals for primary care, intimate
17 partner violence prevention, prenatal care and
18 adoption services.

19 (15) The cumulative effect of these numerous
20 restrictions has been to severely limit the availability
21 of abortion services in some areas, creating a patch-
22 work system where access to abortion services is
23 more available in some States than in others. A
24 2019 report from the Government Accountability Of-
25 fice examining State Medicaid compliance with abor-

1 tion coverage requirements analyzed seven key chal-
2 lenges (identified both by health care providers and
3 research literature) and their effect on abortion ac-
4 cess, and found that access to abortion services var-
5 ied across the States and even within a State.

6 (16) International human rights law recognizes
7 that access to abortion is intrinsically linked to the
8 rights to life, health, equality and non-discrimina-
9 tion, privacy, and freedom from ill-treatment. United
10 Nations (UN) human rights treaty monitoring bod-
11 ies have found that legal abortion services, like other
12 reproductive health care services, must be available,
13 accessible, affordable, acceptable, and of good qual-
14 ity. UN human rights treaty bodies have likewise
15 condemned medically unnecessary barriers to abor-
16 tion services, including mandatory waiting periods,
17 biased counseling requirements, and third-party au-
18 thorization requirements.

19 (17) Core human rights treaties ratified by the
20 United States protect access to abortion. For exam-
21 ple, in 2018, the UN Human Rights Committee,
22 which oversees implementation of the ICCPR, made
23 clear that the right to life, enshrined in Article 6 of
24 the ICCPR, at a minimum requires governments to
25 provide safe, legal, and effective access to abortion

1 where a person's life and health is at risk, or when
2 carrying a pregnancy to term would cause substan-
3 tial pain or suffering. The Committee stated that
4 governments must not impose restrictions on abor-
5 tion which subject women and girls to physical or
6 mental pain or suffering, discriminate against them,
7 arbitrarily interfere with their privacy, or place them
8 at risk of undertaking unsafe abortions. Further-
9 more, the Committee stated that governments should
10 remove existing barriers that deny effective access to
11 safe and legal abortion, refrain from introducing
12 new barriers to abortion, and prevent the stigmatiza-
13 tion of those seeking abortion.

14 (18) UN independent human rights experts
15 have expressed particular concern about barriers to
16 abortion services in the United States. For example,
17 at the conclusion of his 2017 visit to the United
18 States, the UN Special Rapporteur on extreme pov-
19 erty and human rights noted concern that low-in-
20 come women face legal and practical obstacles to ex-
21 ercising their constitutional right to access abortion
22 services, trapping many women in cycles of poverty.
23 Similarly, in May 2020, the UN Working Group on
24 discrimination against women and girls, along with
25 other human rights experts, expressed concern that

1 some states had manipulated the COVID–19 crisis
2 to restrict access to abortion, which the experts rec-
3 ognized as “the latest example illustrating a pattern
4 of restrictions and retrogressions in access to legal
5 abortion care across the country” and reminded
6 U.S. authorities that abortion care constitutes essen-
7 tial health care that must remain available during
8 and after the pandemic. They noted that barriers to
9 abortion access exacerbate systemic inequalities and
10 cause particular harm to marginalized communities,
11 including low-income people, people of color, immi-
12 grants, people with disabilities, and LGBTQ people.

13 (19) Abortion-specific restrictions affect the
14 cost and availability of abortion services, and the
15 settings in which abortion services are delivered.
16 People travel across State lines and otherwise en-
17 gage in interstate commerce to access this essential
18 medical care, and more would be forced to do so ab-
19 sent this Act. Likewise, health care providers travel
20 across State lines and otherwise engage in interstate
21 commerce in order to provide abortion services to
22 patients, and more would be forced to do so absent
23 this Act.

24 (20) Health care providers engage in a form of
25 economic and commercial activity when they provide

1 abortion services, and there is an interstate market
2 for abortion services.

3 (21) Abortion restrictions substantially affect
4 interstate commerce in numerous ways. For exam-
5 ple, to provide abortion services, health care pro-
6 viders engage in interstate commerce to purchase
7 medicine, medical equipment, and other necessary
8 goods and services. To provide and assist others in
9 providing abortion services, health care providers en-
10 gage in interstate commerce to obtain and provide
11 training. To provide abortion services, health care
12 providers employ and obtain commercial services
13 from doctors, nurses, and other personnel who en-
14 gage in interstate commerce and travel across State
15 lines.

16 (22) It is difficult and time and resource-con-
17 suming for clinics to challenge State laws that bur-
18 den or impede abortion services. Litigation that
19 blocks one abortion restriction may not prevent a
20 State from adopting other similarly burdensome
21 abortion restrictions or using different methods to
22 burden or impede abortion services. There is a his-
23 tory and pattern of States passing successive and
24 different laws that unduly burden abortion services.

1 (23) When a health care provider ceases pro-
2 viding abortion services as a result of burdensome
3 and medically unnecessary regulations, it is often
4 difficult or impossible for that health care provider
5 to recommence providing those abortion services,
6 and difficult or impossible for other health care pro-
7 viders to provide abortion services that restore or re-
8 place the ceased abortion services.

9 (24) Health care providers are subject to license
10 laws in various jurisdictions, which are not affected
11 by this Act except as provided in this Act.

12 (25) Congress has the authority to enact this
13 Act to protect abortion services pursuant to—

14 (A) its powers under the commerce clause
15 of section 8 of article I of the Constitution of
16 the United States;

17 (B) its powers under section 5 of the Four-
18 teenth Amendment to the Constitution of the
19 United States to enforce the provisions of sec-
20 tion 1 of the Fourteenth Amendment; and

21 (C) its powers under the necessary and
22 proper clause of section 8 of Article I of the
23 Constitution of the United States.

24 (26) Congress has used its authority in the past
25 to protect access to abortion services and health care

1 providers' ability to provide abortion services. In the
2 early 1990s, protests and blockades at health care
3 facilities where abortion services were provided, and
4 associated violence, increased dramatically and
5 reached crisis level, requiring Congressional action.
6 Congress passed the Freedom of Access to Clinic
7 Entrances Act (Public Law 103–259; 108 Stat. 694)
8 to address that situation and protect physical access
9 to abortion services.

10 (27) Congressional action is necessary to put an
11 end to harmful restrictions, to federally protect ac-
12 cess to abortion services for everyone regardless of
13 where they live, and to protect the ability of health
14 care providers to provide these services in a safe and
15 accessible manner.

16 (b) PURPOSE.—It is the purpose of this Act—

17 (1) to permit health care providers to provide
18 abortion services without limitations or requirements
19 that single out the provision of abortion services for
20 restrictions that are more burdensome than those re-
21 strictions imposed on medically comparable proce-
22 dures, do not significantly advance reproductive
23 health or the safety of abortion services, and make
24 abortion services more difficult to access;

1 (2) to promote access to abortion services and
2 women’s ability to participate equally in the eco-
3 nomic and social life of the United States; and

4 (3) to invoke Congressional authority, including
5 the powers of Congress under the commerce clause
6 of section 8 of article I of the Constitution of the
7 United States, its powers under section 5 of the
8 Fourteenth Amendment to the Constitution of the
9 United States to enforce the provisions of section 1
10 of the Fourteenth Amendment, and its powers under
11 the necessary and proper clause of section 8 of arti-
12 cle I of the Constitution of the United States.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) **ABORTION SERVICES.**—The term “abortion
16 services” means an abortion and any medical or
17 non-medical services related to and provided in con-
18 junction with an abortion (whether or not provided
19 at the same time or on the same day as the abor-
20 tion).

21 (2) **GOVERNMENT.**—The term “government”
22 includes each branch, department, agency, instru-
23 mentality, and official (and other person acting
24 under color of law) of the United States or a State.

1 (3) HEALTH CARE PROVIDER.—The term
2 “health care provider” means any entity or indi-
3 vidual (including any physician, certified nurse-mid-
4 wife, nurse practitioner, and physician assistant)
5 that—

6 (A) is engaged or seeks to engage in the
7 delivery of health care services, including abor-
8 tion services, and

9 (B) if required by law or regulation to be
10 licensed or certified to engage in the delivery of
11 such services—

12 (i) is so licensed or certified, or

13 (ii) would be so licensed or certified
14 but for their past, present, or potential
15 provision of abortion services permitted by
16 section 4.

17 (4) MEDICALLY COMPARABLE PROCEDURE.—
18 The term “medically comparable procedures” means
19 medical procedures that are similar in terms of
20 health and safety risks to the patient, complexity, or
21 the clinical setting that is indicated.

22 (5) PREGNANCY.—The term “pregnancy” refers
23 to the period of the human reproductive process be-
24 ginning with the implantation of a fertilized egg.

1 (6) STATE.—The term “State” includes the
2 District of Columbia, the Commonwealth of Puerto
3 Rico, and each territory and possession of the
4 United States, and any subdivision of any of the
5 foregoing.

6 (7) VIABILITY.—The term “viability” means
7 the point in a pregnancy at which, in the good-faith
8 medical judgment of the treating health care pro-
9 vider, based on the particular facts of the case be-
10 fore the health care provider, there is a reasonable
11 likelihood of sustained fetal survival outside the
12 uterus with or without artificial support.

13 **SEC. 4. PERMITTED SERVICES.**

14 (a) GENERAL RULE.—A health care provider has a
15 statutory right under this Act to provide abortion services,
16 and may provide abortion services, and that provider’s pa-
17 tient has a corresponding right to receive such services,
18 without any of the following limitations or requirements:

19 (1) A requirement that a health care provider
20 perform specific tests or medical procedures in con-
21 nection with the provision of abortion services, un-
22 less generally required for the provision of medically
23 comparable procedures.

24 (2) A requirement that the same health care
25 provider who provides abortion services also perform

1 specified tests, services, or procedures prior to or
2 subsequent to the abortion.

3 (3) A requirement that a health care provider
4 offer or provide the patient seeking abortion services
5 medically inaccurate information in advance of or
6 during abortion services.

7 (4) A limitation on a health care provider's abil-
8 ity to prescribe or dispense drugs based on current
9 evidence-based regimens or the provider's good-faith
10 medical judgment, other than a limitation generally
11 applicable to the medical profession.

12 (5) A limitation on a health care provider's abil-
13 ity to provide abortion services via telemedicine,
14 other than a limitation generally applicable to the
15 provision of medical services via telemedicine.

16 (6) A requirement or limitation concerning the
17 physical plant, equipment, staffing, or hospital
18 transfer arrangements of facilities where abortion
19 services are provided, or the credentials or hospital
20 privileges or status of personnel at such facilities,
21 that is not imposed on facilities or the personnel of
22 facilities where medically comparable procedures are
23 performed.

24 (7) A requirement that, prior to obtaining an
25 abortion, a patient make one or more medically un-

1 necessary in-person visits to the provider of abortion
2 services or to any individual or entity that does not
3 provide abortion services.

4 (8) A prohibition on abortion at any point or
5 points in time prior to fetal viability, including a
6 prohibition or restriction on a particular abortion
7 procedure.

8 (9) A prohibition on abortion after fetal viabil-
9 ity when, in the good-faith medical judgment of the
10 treating health care provider, continuation of the
11 pregnancy would pose a risk to the pregnant pa-
12 tient's life or health.

13 (10) A limitation on a health care provider's
14 ability to provide immediate abortion services when
15 that health care provider believes, based on the
16 good-faith medical judgment of the provider, that
17 delay would pose a risk to the patient's health.

18 (11) A requirement that a patient seeking abor-
19 tion services at any point or points in time prior to
20 fetal viability disclose the patient's reason or reasons
21 for seeking abortion services, or a limitation on the
22 provision or obtaining of abortion services at any
23 point or points in time prior to fetal viability based
24 on any actual, perceived, or potential reason or rea-
25 sons of the patient for obtaining abortion services,

1 regardless of whether the limitation is based on a
 2 health care provider's degree of actual or construc-
 3 tive knowledge of such reason or reasons.

4 (b) OTHER LIMITATIONS OR REQUIREMENTS.—A
 5 health care provider has a statutory right to provide abor-
 6 tion services, and may provide abortion services, and that
 7 provider's patient has a corresponding right to receive
 8 such services, without a limitation or requirement that—

9 (1) is the same as or similar to one or more of
 10 the limitations or requirements described in sub-
 11 section (a); or

12 (2) both—

13 (A) expressly, effectively, implicitly, or as
 14 implemented singles out the provision of abor-
 15 tion services, health care providers who provide
 16 abortion services, or facilities in which abortion
 17 services are provided; and

18 (B) impedes access to abortion services.

19 (c) FACTORS FOR CONSIDERATION.—Factors a court
 20 may consider in determining whether a limitation or re-
 21 quirement impedes access to abortion services for purposes
 22 of subsection (b)(2)(B) include the following:

23 (1) Whether the limitation or requirement, in a
 24 provider's good-faith medical judgment, interferes
 25 with a health care provider's ability to provide care

1 and render services, or poses a risk to the patient's
2 health or safety.

3 (2) Whether the limitation or requirement is
4 reasonably likely to delay or deter some patients in
5 accessing abortion services.

6 (3) Whether the limitation or requirement is
7 reasonably likely to directly or indirectly increase the
8 cost of providing abortion services or the cost for ob-
9 taining abortion services (including costs associated
10 with travel, childcare, or time off work).

11 (4) Whether the limitation or requirement is
12 reasonably likely to have the effect of necessitating
13 a trip to the offices of a health care provider that
14 would not otherwise be required.

15 (5) Whether the limitation or requirement is
16 reasonably likely to result in a decrease in the avail-
17 ability of abortion services in a given State or geo-
18 graphic region.

19 (6) Whether the limitation or requirement im-
20 poses penalties that are not imposed on other health
21 care providers for comparable conduct or failure to
22 act, or that are more severe than penalties imposed
23 on other health care providers for comparable con-
24 duct or failure to act.

1 (7) The cumulative impact of the limitation or
2 requirement combined with other new or existing
3 limitations or requirements.

4 (d) EXCEPTION.—To defend against a claim that a
5 limitation or requirement violates a health care provider’s
6 or patient’s statutory rights under subsection (b), a party
7 must establish, by clear and convincing evidence, that—

8 (1) the limitation or requirement significantly
9 advances the safety of abortion services or the health
10 of patients; and

11 (2) the safety of abortion services or the health
12 of patients cannot be advanced by a less restrictive
13 alternative measure or action.

14 **SEC. 5. APPLICABILITY AND PREEMPTION.**

15 (a) IN GENERAL.—

16 (1) Except as stated under subsection (b), this
17 Act supersedes and applies to the law of the Federal
18 Government and each State government, and the im-
19 plementation of such law, whether statutory, com-
20 mon law, or otherwise, and whether adopted before
21 or after the date of enactment of this Act, and nei-
22 ther the Federal Government nor any State govern-
23 ment shall enact or enforce any law, rule, regulation,
24 standard, or other provision having the force and ef-
25 fect of law that conflicts with any provision of this

1 Act, notwithstanding any other provision of Federal
2 law, including the Religious Freedom Restoration
3 Act of 1993 (42 U.S.C. 2000bb et seq.).

4 (2) Federal statutory law adopted after the
5 date of the enactment of this Act is subject to this
6 Act unless such law explicitly excludes such applica-
7 tion by reference to this Act.

8 (b) LIMITATIONS.—The provisions of this Act shall
9 not supersede or apply to—

10 (1) laws regulating physical access to clinic en-
11 trances;

12 (2) insurance or medical assistance coverage of
13 abortion services;

14 (3) the procedure described in section
15 1531(b)(1) of title 18, United States Code; or

16 (4) generally applicable State contract law.

17 **SEC. 6. EFFECTIVE DATE.**

18 This Act shall take effect immediately upon the date
19 of enactment of this Act. This Act shall apply to all re-
20 strictions on the provision of, or access to, abortion serv-
21 ices whether the restrictions are enacted or imposed prior
22 to or after the date of enactment of this Act, except as
23 otherwise provided in this Act.

1 **SEC. 7. 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 person’s ability to terminate a pregnancy, to
8 diminish or in any way negatively affect a person’s con-
9 stitutional right to terminate a pregnancy, or to displace
10 any other remedy for violations of the constitutional right
11 to terminate a pregnancy.

12 **SEC. 8. 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 limitation or requirement that is challenged as a violation
18 of a statutory right under this Act. The court shall hold
19 unlawful and set aside the limitation or requirement if it
20 is in violation of this Act.

21 (b) PRIVATE RIGHT OF ACTION.—

22 (1) IN GENERAL.—Any individual or entity, in-
23 cluding any health care provider, aggrieved by an al-
24 leged violation of this Act may commence a civil ac-
25 tion for prospective injunctive relief against the gov-
26 ernment official that is charged with implementing

1 or enforcing the limitation or requirement that is
2 challenged as a violation of a statutory right under
3 this Act. The court shall hold unlawful and set aside
4 the limitation or requirement if it is in violation of
5 this Act.

6 (2) HEALTH CARE PROVIDER.—A health care
7 provider may commence an action for prospective in-
8 junctive relief on its own behalf and/or on behalf of
9 the provider's patients who are or may be adversely
10 affected by an alleged violation of this Act.

11 (c) EQUITABLE RELIEF.—In any action under this
12 section, the court may award appropriate equitable relief,
13 including temporary, preliminary, or permanent injunctive
14 relief.

15 (d) COSTS.—In any action under this section, the
16 court shall award costs of litigation, as well as reasonable
17 attorney fees, to any prevailing plaintiff. A plaintiff shall
18 not be liable to a defendant for costs in any non-frivolous
19 action under this section.

20 (e) JURISDICTION.—The district courts of the United
21 States shall have jurisdiction over proceedings under this
22 Act and shall exercise the same without regard to whether
23 the party aggrieved shall have exhausted any administra-
24 tive or other remedies that may be provided for by law.

1 (f) ABROGATION OF STATE IMMUNITY.—A State
2 shall not be immune under the Eleventh Amendment to
3 the Constitution of the United States from an action in
4 Federal or State court of competent jurisdiction for a vio-
5 lation of this Act. In any action against a State for a viola-
6 tion of the requirements of this Act, remedies (including
7 remedies both at law and in equity) are available for such
8 a violation to the same extent as such remedies are avail-
9 able for such a violation in an action against any public
10 or private entity other than a State.

11 **SEC. 9. SEVERABILITY.**

12 If any provision of this Act, or the application of such
13 provision to any person, entity, government, or cir-
14 cumstance, is held to be unconstitutional, the remainder
15 of this Act, or the application of such provision to all other
16 persons, entities, governments, or circumstances, shall not
17 be affected thereby.

○