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1ST SESSION

H. R. 12

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 HOUSE OF REPRESENTATIVES

MARCH 30, 2023

Ms. CHU (for herself, Ms. ADAMS, Mr. AGUILAR, Mr. ALLRED, Mr. AUCHINCLOSS, Ms. BALINT, Ms. BARRAGÁN, Mrs. BEATTY, Mr. BERA, Mr. BEYER, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BOWMAN, Ms. BROWN, Ms. BROWNLEY, Ms. BUDZINSKI, Ms. BUSH, Ms. CARAVEO, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON, Mr. CARTER of Louisiana, Mr. CARTWRIGHT, Mr. CASAR, Mr. CASTEN, Ms. CASTOR of Florida, Mr. CASTRO of Texas, Mr. CICILLINE, Ms. CLARKE of New York, Mr. CLEAVER, Mr. COHEN, Mr. CONNOLLY, Mr. COURTNEY, Ms. CRAIG, Ms. CROCKETT, Mr. CROW, Ms. DAVIDS of Kansas, Mr. DAVIS of Illinois, Ms. DEAN of Pennsylvania, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mr. DELUZIO, Mr. DESAULNIER, Mrs. DINGELL, Mr. DOGGETT, Ms. ESCOBAR, Mr. ESPAILLAT, Mr. EVANS, Mrs. FLETCHER, Mr. FOSTER, Ms. LOIS FRANKEL of Florida, Mr. FROST, Mr. GARAMENDI, Ms. GARCIA of Texas, Mr. ROBERT GARCIA of California, Mr. GARCÍA of Illinois, Ms. PEREZ, Mr. GOLDMAN of New York, Mr. GOMEZ, Mr. GOTTHEIMER, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. HIMES, Mr. HORSFORD, Ms. HOULAHAN, Ms. HOYLE of Oregon, Mr. HUFFMAN, Mr. IVEY, Mr. JACKSON of North Carolina, Ms. JACKSON LEE, Ms. JACOBS, Ms. JAYAPAL, Mr. JEFFRIES, Ms. KAMLAGER-DOVE, Ms. KELLY of Illinois, Mr. KHANNA, Mr. KILDEE, Mr. KILMER, Mr. KRISHNAMOORTHI, Ms. KUSTER, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LEE of Nevada, Ms. LEE of California, Ms. LEE of Pennsylvania, Mr. LEVIN, Mr. LIEU, Ms. LOFGREN, Mr. LYNCH, Mr. MAGAZINER, Ms. MANNING, Ms. MATSUI, Mrs. MCBATH, Mrs. MCCLELLAN, Ms. MCCOLLUM, Mr. MCGOVERN, Mr. GALLEGO, Mr. MEEKS, Ms. MENG, Ms. MOORE of Wisconsin, Mr. MORELLE, Mr. MOSKOWITZ, Mr. MOULTON, Mr. MRVAN, Mr. MULLIN, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL, Mr. NICKEL, Mr. NORCROSS, Ms. NORTON, Ms. OMAR, Mr. PALLONE, Mr. PANETTA, Mr. PASCRELL, Mr. PAYNE, Ms. PELOSI, Mr. PETERS, Ms. PETTERSEN, Ms. PINGREE, Mr. POCAN, Ms. PORTER, Ms. PRESSLEY, Mr. QUIGLEY, Mr. RASKIN, Mr. THANEDAR, Ms. ROSS, Mr. RUPPERSBERGER, Mr. RYAN, Ms. SALINAS,

Ms. SÁNCHEZ, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHNEIDER, Ms. SCHRIER, Mr. SCOTT of Virginia, Ms. SEWELL, Mr. SHERMAN, Ms. SHERRILL, Ms. SLOTKIN, Mr. SMITH of Washington, Mr. SORENSEN, Ms. STANSBURY, Mr. STANTON, Ms. STEVENS, Ms. STRICKLAND, Mr. SWALWELL, Mrs. SYKES, Mr. TAKANO, Mr. THOMPSON of California, Mr. THOMPSON of Mississippi, Ms. TITUS, Ms. TLAIB, Ms. TOKUDA, Mr. TONKO, Mrs. TORRES of California, Mr. TORRES of New York, Mrs. TRAHAN, Mr. TRONE, Ms. UNDERWOOD, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Ms. WEXTON, Ms. WILD, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mrs. HAYES, Mr. MFUME, Mr. JOHNSON of Georgia, Mr. KIM of New Jersey, Mr. COSTA, Ms. LEGER FERNANDEZ, Ms. CLARK of Massachusetts, Ms. ESHOO, Mr. VASQUEZ, Ms. SPANBERGER, Mr. LANDSMAN, Mr. KEATING, Mrs. FOUSHEE, Mr. MENENDEZ, Mr. HOYER, Mr. BOYLE of Pennsylvania, Mr. SOTO, Ms. OCASIO-CORTEZ, Mr. PHILLIPS, Ms. PLASKETT, Mr. GOLDEN of Maine, Mr. MCGARVEY, Mr. RUIZ, Ms. SCHOLTEN, Mrs. PELTOLA, Ms. KAPTUR, Mr. CASE, Mr. NEGUSE, Mr. BISHOP of Georgia, Mr. JACKSON of Illinois, Ms. WATERS, Mr. VARGAS, Mrs. RAMIREZ, Mr. CLYBURN, Mr. VEASEY, and Mr. CORREA) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Women's Health Protection Act of 2023''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Abortion services are essential health care, and access to those services is central to people's ability to participate equally in the economic and social life of the United States. Abortion access allows people who are pregnant to make their own decisions about their pregnancies, their families, and their lives.

(2) Reproductive justice requires every individual to have the right to make their own decisions about having children regardless of their circumstances and without interference and discrimination. Reproductive justice is a human right that can and will be achieved when all people, regardless of actual or perceived race, color, national origin, immigration status, sex (including gender identity, sex stereotyping, or sexual orientation), age, or disability status have the economic, social, and political power and resources to define and make decisions about their bodies, health, sexuality, families, and communities in all areas of their lives, with dignity and self-determination.

(3) Abortion care, like all health care, is a human right that should not depend on one's ZIP Code or region, age, actual or perceived race, national origin, immigration status, sex, or disability

status. Unfortunately, this is the current reality for millions, creating a patchwork of abortion access across the United States. Protecting the right to determine whether to continue or end a pregnancy, and the right of health care providers to provide abortion care, is necessary and essential to achieving this human right, and ultimately reproductive justice.

(4) On June 24, 2022, in its decision in Dobbs v. Jackson Women's Health Organization, the Supreme Court overruled Roe v. Wade, reversing decades of precedent recognizing a constitutional right to terminate a pregnancy before fetal viability.

(5) The effects of the Dobbs decision were immediate and disastrous. In the aftermath of the Dobbs decision, many States imposed near-total bans on abortion. As of March 2023, abortion is unavailable in 14 States, leaving 17.8 million women of reproductive age (15–49) and transgender and gender nonconforming individuals with the capacity to become pregnant without abortion access in their home State. Within 100 days of the ruling, 66 clinics across 15 States were forced to stop offering abortions.

(6) Travel time to an abortion clinic, already a burden for abortion seekers under Roe, has more than tripled since Dobbs. As distance to an abortion facility increases, so do the accompanying (and potentially prohibitive) burdens of time off work or school, lost wages, transportation costs, lodging, child care costs, and other ancillary costs.

(7) Even before the Dobbs decision, access to abortion services had long been obstructed across the United States in various ways, including: prohibitions of, and restrictions on, insurance coverage; mandatory parental involvement laws; restrictions that shame and stigmatize people seeking abortion services; and medically unnecessary regulations that fail to further the safety of abortion services, but instead cause harm people by delaying, complicating access to, and reducing the availability of, abortion services.

(8) Being denied an abortion can have serious consequences for people's physical, mental, and economic health and well-being, and that of their families. According to the Turnaway Study, a longitudinal study published by Advancing New Standards In Reproductive Health (ANSIRH) in 2019, individuals who are denied a wanted abortion are more

likely to experience economic insecurity than individuals who receive a wanted abortion. After following participants for five years, the study found that people who were denied abortion care were more likely to live in poverty, experience debt, and have lower credit scores for several years after the denial. These findings demonstrate that when people have control over when to have children and how many children to have, their children benefit through increased economic security and better maternal bonding.

(9) Abortion bans and restrictions have repercussions for a broad range of health care beyond pregnancy termination, including exacerbating the existing maternal health crisis facing the United States. The United States has the highest maternal mortality rate of any industrialized nations, and Black women and birthing people face three times the risk of dying from pregnancy related causes as their white counterparts. Even prior to Dobbs, research found that States that enacted abortion restrictions based on gestation increased their maternal mortality rate by 38 percent. Research has found that a nationwide ban would increase the United States maternal mortality rate by an additional 24 percent. Furthermore, States that have

banned, are planning to ban, or have severely restricted abortion care have fewer maternal health providers, more maternity care deserts, higher rates of both maternal and infant mortality, and greater racial inequity in health care.

(10) Abortion bans and restrictions additionally harm people's health by reducing access to other essential health care services offered by many of the providers targeted by the restrictions, including—

(A) screenings and preventive services, including contraceptive services;

(B) testing and treatment for sexually transmitted infections;

(C) LGBTQ health services; and

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

(11) This ripple effect has only worsened since the Dobbs decision. Clinicians and pharmacists have denied access to essential medication for conditions including gastric ulcers and autoimmune diseases because those drugs are also used for medication abortion care. Patients are reporting being denied or delayed in their receipt of necessary and potentially lifesaving treatment for ectopic pregnancies and mis-

carriage management because of the newfound legal risks facing providers.

(12) Reproductive justice seeks to address restrictions on reproductive health, including abortion, that perpetuate systems of oppression, lack of bodily autonomy, white supremacy, and anti-Black racism. This violent legacy has manifested in policies including 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, Latina/x, Asian American and Pacific Islander, and People of Color (BIPOC) and their families.

(13) The legacy of restrictions on reproductive health, rights, and justice is not a dated vestige of a dark history. Data show the harms of abortion-specific restrictions fall especially heavily on people with low incomes, people of color, immigrants, young people, people with disabilities, and those living in rural and other medically underserved areas. Abortion bans and restrictions are compounded further by the ongoing criminalization of people who are

pregnant, including those who are incarcerated, living with HIV, or with substance-use disorders. These populations already experience health disparities due to social, political, and environmental inequities, and restrictions on abortion services exacerbate these harms. Removing bans and restrictions on abortion services would constitute one important step on the path toward realizing reproductive justice by ensuring that the full range of reproductive health care is accessible to all who need it.

(14) Abortion bans and restrictions are tools of gender oppression, as they target health care services that are used primarily by women. These paternalistic bans and restrictions rely on and reinforce harmful stereotypes about gender roles and women's decisionmaking, undermining their ability to control their own lives and well-being. These restrictions harm the basic autonomy, dignity, and equality of women.

(15) The terms ''woman'' and ''women'' are used in this bill to reflect the identity of the majority of people targeted and most directly affected by bans and restrictions on abortion services, which are rooted in misogyny. However, access to abortion services is critical to the health of every person capable of

becoming pregnant. This Act is intended to protect all people with the capacity for pregnancy—cisgender women, transgender men, nonbinary individuals, those who identify with a different gender, and others—who are unjustly harmed by restrictions on abortion services.

(16) Pregnant individuals will continue to experience a range of pregnancy outcomes, including abortion, miscarriage, stillbirths, and infant losses regardless of how the State attempts to exert power over their reproductive decisionmaking, and will continue to need support for their health and well-being through their reproductive lifespans.

(17) Evidence from the United States and around the globe bears out that criminalizing abortion invariably leads to arrests, investigations, and imprisonment of people who end their pregnancies or experience pregnancy loss, leading to violations of fundamental rights to liberty, dignity, bodily autonomy, equality, due process, privacy, health, and freedom from cruel and inhumane treatment.

(18) All major experts in public health and medicine such as the American Medical Association, American Public Health Association, American Academy of Pediatrics, American Society of Addic-

tion Medicine, and the American College of Obstetricians and Gynecologists, oppose the criminalization of pregnancy outcomes because the threat of being subject to investigation or punishment through the criminal legal system when seeking health care threatens pregnant people's lives and undermines public health by deterring people from seeking care for obstetrical emergencies.

(19) Antiabortion stigma that is compounded by abortion bans and restrictions also contributes to violence and harassment that put both people seeking and people providing abortion care at risk. From 1977 to 2021, there were 11 murders, 42 bombings, 196 acts of arson, 491 assaults, and thousands of other incidents of criminal activity directed at abortion seekers, providers, volunteers, and clinic staff. This violence existed under Roe and has been steadily escalating for years. The presence of dangerous protestors and organized extremists acts as yet another barrier to abortion care, and this threat has become even more urgent as abortion bans proliferate and stigma around abortion care increases.

(20) Abortion is one of the safest medical procedures in the United States. An independent, comprehensive review of the state of science on the safe-

ty and quality of abortion services, published by the National Academies of Sciences, Engineering, and Medicine in 2018, found that abortion in the United States is safe and effective and that the biggest threats to the quality of abortion services in the United States are State regulations that create barriers to care. Such abortion-specific restrictions, as well as broader State bans, conflict with medical standards and are not supported by the recommendations and guidelines issued by leading reproductive health care professional organizations including the American College of Obstetricians and Gynecologists, the Society of Family Planning, the National Abortion Federation, the World Health Organization, and others.

(21) For over 20 years, medication abortion care has been available in the United States as a safe, effective, Food and Drug Administration (FDA)-approved treatment to end an early pregnancy. Today, medication abortion care accounts for more than half of all pregnancy terminations in the United States; however, significant barriers to access remain in place, particularly in States that have imposed onerous restrictions that conflict with FDA's regulation of medication abortion. Additionally, op-

ponents of abortion are now deploying new tactics to limit access to this FDA-approved medication that would set a dangerous precedent for the Federal regulation of medication products and have national repercussions.

(22) Health care providers are subject to licensing laws in various jurisdictions, which are not affected by this Act except as expressly provided in this Act.

(23) International human rights law recognizes that access to abortion is intrinsically linked to the rights to life, health, equality and nondiscrimination, privacy, and freedom from ill treatment. United Nations (UN) human rights treaty monitoring bodies have found that legal abortion services, like other reproductive health care services, must be available, accessible, affordable, acceptable, and of good quality. UN human rights treaty bodies have condemned criminalization of abortion and medically unnecessary barriers to abortion services, including mandatory waiting periods, biased counseling requirements, and third-party authorization requirements.

(24) Core human rights treaties ratified by the United States protect access to abortion. For example, in 2018, the UN Human Rights Committee,

which oversees implementation of the International Covenant on Civil and Political Rights (ICCPR), made clear that the right to life, enshrined in Article 6 of the ICCPR, at a minimum requires governments to provide safe, legal, and effective access to abortion where a person's life and health are at risk, or when carrying a pregnancy to term would otherwise cause substantial pain or suffering. The Committee stated that governments must not impose restrictions on abortion which subject women and girls to physical or mental pain or suffering, discriminate against them, arbitrarily interfere with their privacy, or place them at risk of undertaking unsafe abortions. The Committee stated that governments should not apply criminal sanctions to women and girls who undergo abortion or to medical service providers who assist them in doing so. Furthermore, the Committee stated that governments should remove existing barriers that deny effective access to safe and legal abortion, refrain from introducing new barriers to abortion, and prevent the stigmatization of those seeking abortion.

(25) International human rights experts have condemned the Dobbs decision and regression on abortion rights in the United States more generally

as a violation of human rights. Immediately upon release of the decision, then-UN High Commissioner for Human Rights Michelle Bachelet reiterated human rights protections for abortion and the impact that the decision will have on the fundamental rights of millions within the United States, particularly people with low incomes and people belonging to racial and ethnic minorities. UN independent human rights experts, including the UN Working Group on discrimination against women and girls, the UN Special Rapporteur on the right to health, and the UN Special Rapporteur on violence against women and girls, similarly denounced the decision. At the conclusion of a human rights review of the United States in August 2022, the UN Committee on the Elimination of Racial Discrimination noted deep concerns with the Dobbs decision and recommended that the United States address the disparate impact that it will have on racial and ethnic minorities, Indigenous women, and those with low incomes.

(26) Abortion bans and restrictions affect the cost and availability of abortion services, and the settings in which abortion services are delivered. People travel across State lines and otherwise en-

gage in interstate commerce to access this essential medical care. Likewise, health care providers travel across State lines and otherwise engage in interstate commerce in order to provide abortion services to patients, and more would be forced to do so absent this Act.

(27) Legal limitations and requirements imposed upon health care providers or their patients invariably affect commerce over which the United States has jurisdiction. Health care providers engage in a form of economic and commercial activity when they provide abortion services, and there is an interstate market for abortion services.

(28) Abortion bans and restrictions substantially affect interstate commerce in numerous ways. For example, to provide abortion services, health care providers engage in interstate commerce to purchase medicine, medical equipment, and other necessary goods and services. To provide and assist others in providing abortion services, health care providers engage in interstate commerce to obtain and provide training. To provide abortion services, health care providers employ and obtain commercial services from doctors, nurses, and other personnel who

engage in interstate commerce, including by and traveling across State lines.

(29) Congress has the authority to enact this Act to protect access to abortion services pursuant to—

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

(B) its powers under section 5 of the Fourteenth Amendment to the Constitution of the United States to enforce the provisions of section 1 of the Fourteenth Amendment; and

(C) its powers under the necessary and proper clause of section 8 of article I of the Constitution of the United States.

(30) Congress has used its authority in the past to protect access to abortion services and health care providers' ability to provide abortion services. In the early 1990s, protests and blockades at health care facilities where abortion services were provided, and associated violence, increased dramatically and reached crisis level, requiring congressional action. Congress passed the Freedom of Access to Clinic Entrances Act (Public Law 103–259; 108 Stat. 694)

to address that situation and protect physical access to abortion services.

(31) Congressional action is necessary to put an end to harmful restrictions, to protect access to abortion services for everyone regardless of where they live, to protect the ability of health care providers to provide these services in a safe and accessible manner, and to eliminate unwarranted burdens on commerce and the right to travel.

SEC. 3. PURPOSE.

The purposes of this Act are as follows:

(1) To permit people to seek and obtain abortion services, and to permit health care providers to provide abortion services, without harmful or unwarranted limitations or requirements that single out the provision of abortion services for restrictions that are more burdensome than those restrictions imposed on medically comparable procedures, do not significantly advance reproductive health or the safety of abortion services, or make abortion services more difficult to access.

(2) To promote access to abortion services and thereby protect women's ability to participate equally in the economic and social life of the United States.

(3) To protect people's ability to make decisions about their bodies, medical care, family, and life's course.

(4) To eliminate unwarranted burdens on commerce and the right to travel. Abortion bans and restrictions invariably affect commerce over which the United States has jurisdiction. Health care providers engage in economic and commercial activity when they provide abortion services. Moreover, there is an interstate market for abortion services and, in order to provide such services, health care providers engage in interstate commerce to purchase medicine, medical equipment, and other necessary goods and services; to obtain and provide training; and to employ and obtain commercial services from health care personnel, many of whom themselves engage in interstate commerce, including by traveling across State lines. Congress has the authority to enact this Act to protect access to abortion services pursuant to—

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

(B) its powers under section 5 of the Fourteenth Amendment to the Constitution of the

United States to enforce the provisions of section 1 of the Fourteenth Amendment; and

(C) its powers under the necessary and proper clause of section 8 of article I of the Constitution of the United States.

SEC. 4. DEFINITIONS.

In this Act:

(1) ABORTION SERVICES.—The term ''abortion services'' means an abortion and any medical or non-medical services related to and provided in conjunction with an abortion (whether or not provided at the same time or on the same day as the abortion).

(2) GOVERNMENT.—The term ''government'' includes each branch, department, agency, instrumentality, and official of the United States or a State.

(3) HEALTH CARE PROVIDER.—The term ''health care provider'' means any entity (including any hospital, clinic, or pharmacy) or individual (including any physician, certified nurse-midwife, nurse practitioner, pharmacist, or physician assistant) that—

(A) is engaged or seeks to engage in the delivery of health care services, including abortion services; and

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

(i) is so licensed or certified; or

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

(4) MEDICALLY COMPARABLE PROCEDURES.—The term ''medically comparable procedures'' means medical procedures that are similar in terms of health and safety risks to the patient, complexity, or the clinical setting that is indicated.

(5) PREGNANCY.—The term ''pregnancy'' refers to the period of the human reproductive process beginning with the implantation of a fertilized egg.

(6) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States, and any subdivision of any of the foregoing, including any unit of local government,

such as a county, city, town, village, or other general purpose political subdivision of a State.

(7) VIABILITY.—The term ''viability'' means the point in a pregnancy at which, in the good-faith medical judgment of the treating health care provider, and based on the particular facts of the case before the health care provider, there is a reasonable likelihood of sustained fetal survival outside the uterus with or without artificial support.

SEC. 5. PROTECTED ACTIVITIES AND SERVICES.

(a) GENERAL RULES.—

(1) PRE-VIABILITY.—A health care provider has a right under this Act to provide abortion services, and a patient has a corresponding right under this Act to terminate a pregnancy prior to viability without being subject to any of the following limitations or requirements:

(A) A prohibition on abortion prior to viability, including a prohibition or restriction on a particular abortion procedure or method, or a prohibition on providing or obtaining such abortions.

(B) A limitation on a health care provider's ability to prescribe or dispense drugs that could be used for reproductive health pur-

poses based on current evidence-based regimens or the provider's good-faith medical judgment, or a limitation on a patient's ability to receive or use such drugs, other than a limitation generally applicable to the prescription, dispensing, or distribution of drugs.

(C) A limitation on a health care provider's ability to provide, or a patient's ability to receive, abortion services via telemedicine, other than a limitation generally applicable to the provision of medically comparable services via telemedicine.

(D) A limitation or prohibition on a patient's ability to receive, or a provider's ability to provide, abortion services in a State based on the State of residency of the patient, or a prohibition or limitation on the ability of any individual to assist or support a patient seeking abortion.

(E) A requirement that a health care provider perform specific tests or medical procedures in connection with the provision of abortion services (including prior to or subsequent to the abortion), unless generally required for

the provision of medically comparable procedures.

(F) A requirement that a health care provider offer or provide a patient seeking abortion services medically inaccurate information.

(G) A limitation or requirement concerning the physical plant, equipment, staffing, or hospital transfer arrangements of facilities where abortion services are provided, or the credentials or hospital privileges or status of personnel at such facilities, that is not imposed on facilities or the personnel of facilities where medically comparable procedures are performed.

(H) A requirement that, prior to obtaining an abortion, a patient make one or more medically unnecessary in-person visits to the provider of abortion services or to any individual or entity that does not provide abortion services.

(I) A limitation on a health care provider's ability to provide immediate abortion services when that health care provider believes, based on the good-faith medical judgment of the provider, that delay would pose a risk to the patient's life or health.

(J) A requirement that a patient seeking abortion services at any point or points in time prior to viability disclose the patient's reason or reasons for seeking abortion services, or a limitation on providing or obtaining abortion services at any point or points in time prior to viability based on any actual, perceived, or potential reason or reasons of the patient for obtaining abortion services, regardless of whether the limitation is based on a health care provider's actual or constructive knowledge of such reason or reasons.

(2) POST-VIABILITY.—

(A) IN GENERAL.—A health care provider has a right under this Act to provide abortion services and a patient has a corresponding right under this Act to terminate a pregnancy after viability when, in the good-faith medical judgement of the treating health care provider, it is necessary to protect the life or health of the patient. This subparagraph shall not otherwise apply after viability.

(B) ADDITIONAL CIRCUMSTANCES.—A State may provide additional circumstances

under which post viability abortions are permitted under this paragraph.

(C) LIMITATION.—In the case where a termination of a pregnancy after viability, in the good-faith medical judgement of the treating health care provider, is necessary to protect the life or health of the patient, a State shall not impose any of the limitations or requirements described in paragraph (1).

(b) OTHER LIMITATIONS OR REQUIREMENTS.—The rights described in subsection (a) shall not be limited or otherwise infringed through any other limitation or requirement that—

(1) expressly, effectively, implicitly, or as implemented, singles out abortion, the provision of abortion services, individuals who seek abortion services or who provide assistance and support to those seeking abortion services, health care providers who provide abortion services, or facilities in which abortion services are provided; and

(2) impedes access to abortion services.

(c) FACTORS FOR CONSIDERATION.—A court may consider the following factors, among others, in determining whether a limitation or requirement impedes access to abortion services for purposes of subsection (b)(2):

(1) Whether the limitation or requirement, in a provider's good-faith medical judgment, interferes with a health care provider's ability to provide care and render services, or poses a risk to the patient's health or safety.

(2) Whether the limitation or requirement is reasonably likely to delay or deter a patient in accessing abortion services.

(3) Whether the limitation or requirement is reasonably likely to directly or indirectly increase the cost of providing abortion services or the cost for obtaining abortion services such as costs associated with travel, childcare, or time off work.

(4) Whether the limitation or requirement is reasonably likely to have the effect of necessitating patient travel that would not otherwise have been required, including by making it necessary for a patient to travel out of State to obtain services.

(5) Whether the limitation or requirement is reasonably likely to result in a decrease in the availability of abortion services in a given State or geographic region.

(6) Whether the limitation or requirement imposes penalties that are not imposed on other health care providers for comparable conduct or failure to

act, or that are more severe than penalties imposed on other health care providers for comparable conduct or failure to act.

(7) The cumulative impact of the limitation or requirement combined with other limitations or requirements.

(d) EXCEPTION.—To defend against a claim that a limitation or requirement violates a health care provider's or patient's rights under subsection (b) a party must establish, by clear and convincing evidence, that the limitation or requirement is essential to significantly advance the safety of abortion services or the health of patients and that the safety or health objective cannot be accomplished by a different means that does not interfere with the right protected under subsection (b).

SEC. 6. PROTECTION OF THE RIGHT TO TRAVEL.

A person has a fundamental right under the Constitution of the United States and this Act to travel to a State other than the person's State of residence, including to obtain reproductive health services such as prenatal, childbirth, fertility, and abortion services, and a person has a right under this Act to assist another person to obtain such services or otherwise exercise the right described in this section.

SEC. 7. APPLICABILITY AND PREEMPTION.

(a) IN GENERAL.—

(1) SUPERSEDING INCONSISTENT LAWS.—Except as provided under subsection (b), this Act shall supersede any inconsistent Federal or State law, and the implementation of such law, whether statutory, common law, or otherwise, and whether adopted prior to or after the date of enactment of this Act. A Federal or State government official shall not administer, implement, or enforce any law, rule, regulation, standard, or other provision having the force and effect of law that conflicts with any provision of this Act, notwithstanding any other provision of Federal law, including the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

(2) LAWS AFTER DATE OF ENACTMENT.—Federal law enacted after the date of the enactment of this Act shall be subject to this Act unless such law explicitly excludes such application by reference to this Act.

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

(1) laws regulating physical access to clinic entrances;

(2) laws regulating insurance or medical assistance coverage of abortion services;

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

(4) generally applicable State contract law.

(c) PREEMPTION DEFENSE.—In any legal or administrative action against a person or entity who has exercised or attempted to exercise a right protected by section 4 or section 5 or against any person or entity who has taken any step to assist any such person or entity in exercising such right, this Act shall also apply to, and may be raised as a defense by, such person or entity, in addition to the remedies specified in section 8.

SEC. 8. RULES OF CONSTRUCTION.

(a) LIBERAL CONSTRUCTION BY COURTS.—In any action before a court under this Act, the court shall liberally construe the provisions of this Act to effectuate the purposes of the Act.

(b) PROTECTION OF LIFE AND HEALTH.—Nothing in this Act shall be construed to authorize any government official to interfere with, diminish, or negatively affect a person's ability to obtain or provide abortion services prior to viability, or after viability when, in the good-faith medical judgment of the treating health care provider, continuation of the pregnancy would pose a risk to the pregnant patient's life or health.

(c) GOVERNMENT OFFICIALS.—Any person who, by operation of a provision of Federal or State law, is permitted to implement or enforce a limitation or requirement that violates section 4 or 5 shall be considered a government official for purposes of this Act.

SEC. 9. ENFORCEMENT.

(a) ATTORNEY GENERAL.—The Attorney General may commence a civil action on behalf of the United States in any district court of the United States against any State that violates, or against any government official (including a person described in section 7(c)) who implements or enforces a limitation or requirement that violates, section 4 or 5. The court shall declare unlawful the limitation or requirement if it is determined to be in violation of this Act.

(b) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—Any individual or entity adversely affected by an alleged violation of this Act, including any person or health care provider, may commence a civil action against any government official (including a person described in section 7(c)) that implements or enforces a limitation or requirement that violates, section 4 or 5. The court shall declare unlawful the limitation or requirement if it is determined to be in violation of this Act.

(2) HEALTH CARE PROVIDER.—A health care provider may commence an action for relief on its own behalf, on behalf of the provider's staff, and on behalf of the provider's patients who are or may be adversely affected by an alleged violation of this Act.

(c) PRE-ENFORCEMENT CHALLENGES.—A suit under subsection (a) or (b) may be brought to prevent enforcement or implementation by any government of a State limitation or requirement that is inconsistent with section 4 or 5.

(d) DECLARATORY AND EQUITABLE RELIEF.—In any action under this section, the court may award appropriate declaratory and equitable relief, including temporary, preliminary, or permanent injunctive relief.

(e) COSTS.—In any action under this section, the court shall award costs of litigation, as well as reasonable attorney's fees, to any prevailing plaintiff. A plaintiff shall not be liable to a defendant for costs or attorney's fees in any non-frivolous action under this section.

(f) JURISDICTION.—The district courts of the United States shall have jurisdiction over proceedings under this Act and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided for by law.

(g) ABROGATION OF STATE IMMUNITY.—Neither a State that enforces or maintains, nor a government official (including a person described in section 7(c)) who is permitted to implement or enforce any limitation or requirement that violates section 4 or 5 shall be immune under the Tenth Amendment to the Constitution of the United States, the Eleventh Amendment to the Constitution of the United States, or any other source of law, from an action in a Federal or State court of competent jurisdiction challenging that limitation or requirement, unless such immunity is required by clearly established Federal law, as determined by the Supreme Court of the United States.

SEC. 10. EFFECTIVE DATE.

This Act shall take effect upon the date of enactment of this Act.

SEC. 11. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person, entity, government, or circumstance, is held to be unconstitutional, the remainder of this Act, or the application of such provision to all other persons, entities, governments, or circumstances, shall not be affected thereby.

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