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AN ACT

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Women's Health Pro-
5 tection Act of 2021".

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

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

1 (1) Abortion services are essential to health
2 care and access to those services is central to peo-
3 ple’s ability to participate equally in the economic
4 and social life of the United States. Abortion access
5 allows people who are pregnant to make their own
6 decisions about their pregnancies, their families, and
7 their lives.

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

16 (3) Nonetheless, access to abortion services has
17 been obstructed across the United States in various
18 ways, including blockades of health care facilities
19 and associated violence, prohibitions of, and restric-
20 tions on, insurance coverage; parental involvement
21 laws (notification and consent); restrictions that
22 shame and stigmatize people seeking abortion serv-
23 ices; and medically unnecessary regulations that nei-
24 ther confer any health benefit nor further the safety
25 of abortion services, but which harm people by de-

1 laying, complicating access to, and reducing the
2 availability of, abortion services.

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

17 (5) Reproductive justice seeks to address re-
18 strictions on reproductive health, including abortion,
19 that perpetuate systems of oppression, lack of bodily
20 autonomy, white supremacy, and anti-Black racism.
21 This violent legacy has manifested in policies includ-
22 ing enslavement, rape, and experimentation on Black
23 women; forced sterilizations; medical experimen-
24 tation on low-income women's reproductive systems;
25 and the forcible removal of Indigenous children. Ac-

1 cess to equitable reproductive health care, including
2 abortion services, has always been deficient in the
3 United States for Black, Indigenous, and other Peo-
4 ple of Color (BIPOC) and their families.

5 (6) The legacy of restrictions on reproductive
6 health, rights, and justice is not a dated vestige of
7 a dark history. Presently, the harms of abortion-spe-
8 cific restrictions fall especially heavily on people with
9 low incomes, BIPOC, immigrants, young people,
10 people with disabilities, and those living in rural and
11 other medically underserved areas. Abortion-specific
12 restrictions are even more compounded by the ongo-
13 ing criminalization of people who are pregnant, in-
14 cluding those who are incarcerated, living with HIV,
15 or with substance-use disorders. These communities
16 already experience health disparities due to social,
17 political, and environmental inequities, and restric-
18 tions on abortion services exacerbate these harms.
19 Removing medically unjustified restrictions on abor-
20 tion services would constitute one important step on
21 the path toward realizing Reproductive Justice by
22 ensuring that the full range of reproductive health
23 care is accessible to all who need it.

24 (7) Abortion-specific restrictions are a tool of
25 gender oppression, as they target health care serv-

1 ices that are used primarily by women. These pater-
2 nalistic restrictions rely on and reinforce harmful
3 stereotypes about gender roles, women’s decision-
4 making, and women’s need for protection instead of
5 support, undermining their ability to control their
6 own lives and well-being. These restrictions harm the
7 basic autonomy, dignity, and equality of women, and
8 their ability to participate in the social and economic
9 life of the Nation.

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

23 (9) Since 2011, States and local governments
24 have passed nearly 500 restrictions singling out
25 health care providers who offer abortion services,

1 interfering with their ability to provide those services
2 and the patients' ability to obtain those services.

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

14 (11) Abortion is essential health care and one
15 of the safest medical procedures in the United
16 States. An independent, comprehensive review of the
17 state of science on the safety and quality of abortion
18 services, published by the National Academies of
19 Sciences, Engineering, and Medicine in 2018, found
20 that abortion in the United States is safe and effec-
21 tive and that the biggest threats to the quality of
22 abortion services in the United States are State reg-
23 ulations that create barriers to care. These abortion-
24 specific restrictions conflict with medical standards
25 and are not supported by the recommendations and

1 guidelines issued by leading reproductive health care
2 professional organizations including the American
3 College of Obstetricians and Gynecologists, the Soci-
4 ety of Family Planning, the National Abortion Fed-
5 eration, the World Health Organization, and others.

6 (12) Many abortion-specific restrictions do not
7 confer any health or safety benefits on the patient.
8 Instead, these restrictions have the purpose and ef-
9 fect of unduly burdening people’s personal and pri-
10 vate medical decisions to end their pregnancies by
11 making access to abortion services more difficult,
12 invasive, and costly, often forcing people to travel
13 significant distances and make multiple unnecessary
14 visits to the provider, and in some cases, foreclosing
15 the option altogether. For example, a 2018 report
16 from the University of California San Francisco’s
17 Advancing New Standards in Reproductive Health
18 research group found that in 27 cities across the
19 United States, people have to travel more than 100
20 miles in any direction to reach an abortion provider.

21 (13) An overwhelming majority of abortions in
22 the United States are provided in clinics, not hos-
23 pitals, but the large majority of counties throughout
24 the United States have no clinics that provide abor-
25 tion.

1 (14) These restrictions additionally harm peo-
2 ple’s health by reducing access not only to abortion
3 services but also to other essential health care serv-
4 ices offered by many of the providers targeted by the
5 restrictions, including—

6 (A) screenings and preventive services, in-
7 cluding contraceptive services;

8 (B) testing and treatment for sexually
9 transmitted infections;

10 (C) LGBTQ health services; and

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

14 (15) The cumulative effect of these numerous
15 restrictions has been to severely limit the availability
16 of abortion services in some areas, creating a patch-
17 work system where access to abortion services is
18 more available in some States than in others. A
19 2019 report from the Government Accountability Of-
20 fice examining State Medicaid compliance with abor-
21 tion coverage requirements analyzed seven key chal-
22 lenges (identified both by health care providers and
23 research literature) and their effect on abortion ac-
24 cess, and found that access to abortion services var-
25 ied across the States and even within a State.

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

14 (17) Core human rights treaties ratified by the
15 United States protect access to abortion. For exam-
16 ple, in 2018, the UN Human Rights Committee,
17 which oversees implementation of the ICCPR, made
18 clear that the right to life, enshrined in Article 6 of
19 the ICCPR, at a minimum requires governments to
20 provide safe, legal, and effective access to abortion
21 where a person's life and health is at risk, or when
22 carrying a pregnancy to term would cause substan-
23 tial pain or suffering. The Committee stated that
24 governments must not impose restrictions on abor-
25 tion which subject women and girls to physical or

1 mental pain or suffering, discriminate against them,
2 arbitrarily interfere with their privacy, or place them
3 at risk of undertaking unsafe abortions. Further-
4 more, the Committee stated that governments should
5 remove existing barriers that deny effective access to
6 safe and legal abortion, refrain from introducing
7 new barriers to abortion, and prevent the stigmatiza-
8 tion of those seeking abortion.

9 (18) UN independent human rights experts
10 have expressed particular concern about barriers to
11 abortion services in the United States. For example,
12 at the conclusion of his 2017 visit to the United
13 States, the UN Special Rapporteur on extreme pov-
14 erty and human rights noted concern that low-in-
15 come women face legal and practical obstacles to ex-
16 ercising their constitutional right to access abortion
17 services, trapping many women in cycles of poverty.
18 Similarly, in May 2020, the UN Working Group on
19 discrimination against women and girls, along with
20 other human rights experts, expressed concern that
21 some states had manipulated the COVID–19 crisis
22 to restrict access to abortion, which the experts rec-
23 ognized as “the latest example illustrating a pattern
24 of restrictions and retrogressions in access to legal
25 abortion care across the country” and reminded

1 U.S. authorities that abortion care constitutes essen-
2 tial health care that must remain available during
3 and after the pandemic. They noted that barriers to
4 abortion access exacerbate systemic inequalities and
5 cause particular harm to marginalized communities,
6 including low-income people, people of color, immi-
7 grants, people with disabilities, and LGBTQ people.

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

19 (20) Health care providers engage in a form of
20 economic and commercial activity when they provide
21 abortion services, and there is an interstate market
22 for abortion services.

23 (21) Abortion restrictions substantially affect
24 interstate commerce in numerous ways. For exam-
25 ple, to provide abortion services, health care pro-

1 viders engage in interstate commerce to purchase
2 medicine, medical equipment, and other necessary
3 goods and services. To provide and assist others in
4 providing abortion services, health care providers en-
5 gage in interstate commerce to obtain and provide
6 training. To provide abortion services, health care
7 providers employ and obtain commercial services
8 from doctors, nurses, and other personnel who en-
9 gage in interstate commerce and travel across State
10 lines.

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

20 (23) When a health care provider ceases pro-
21 viding abortion services as a result of burdensome
22 and medically unnecessary regulations, it is often
23 difficult or impossible for that health care provider
24 to recommence providing those abortion services,
25 and difficult or impossible for other health care pro-

1 providers to provide abortion services that restore or re-
2 place the ceased abortion services.

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

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

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

11 (B) its powers under section 5 of the Four-
12 teenth Amendment to the Constitution of the
13 United States to enforce the provisions of sec-
14 tion 1 of the Fourteenth Amendment; and

15 (C) its powers under the necessary and
16 proper clause of section 8 of Article I of the
17 Constitution of the United States.

18 (26) Congress has used its authority in the past
19 to protect access to abortion services and health care
20 providers' ability to provide abortion services. In the
21 early 1990s, protests and blockades at health care
22 facilities where abortion services were provided, and
23 associated violence, increased dramatically and
24 reached crisis level, requiring Congressional action.
25 Congress passed the Freedom of Access to Clinic

1 Entrances Act (Public Law 103–259; 108 Stat. 694)
2 to address that situation and protect physical access
3 to abortion services.

4 (27) Congressional action is necessary to put an
5 end to harmful restrictions, to federally protect ac-
6 cess to abortion services for everyone regardless of
7 where they live, and to protect the ability of health
8 care providers to provide these services in a safe and
9 accessible manner.

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

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

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

22 (3) to invoke Congressional authority, including
23 the powers of Congress under the commerce clause
24 of section 8 of article I of the Constitution of the
25 United States, its powers under section 5 of the

1 Fourteenth Amendment to the Constitution of the
2 United States to enforce the provisions of section 1
3 of the Fourteenth Amendment, and its powers under
4 the necessary and proper clause of section 8 of arti-
5 cle I of the Constitution of the United States.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) **ABORTION SERVICES.**—The term “abortion
9 services” means an abortion and any medical or
10 non-medical services related to and provided in con-
11 junction with an abortion (whether or not provided
12 at the same time or on the same day as the abor-
13 tion).

14 (2) **GOVERNMENT.**—The term “government”
15 includes each branch, department, agency, instru-
16 mentality, and official of the United States or a
17 State.

18 (3) **HEALTH CARE PROVIDER.**—The term
19 “health care provider” means any entity or indi-
20 vidual (including any physician, certified nurse-mid-
21 wife, nurse practitioner, and physician assistant)
22 that—

23 (A) is engaged or seeks to engage in the
24 delivery of health care services, including abor-
25 tion services, and

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

4 (i) is so licensed or certified, or

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

9 (4) MEDICALLY COMPARABLE PROCEDURE.—

10 The term “medically comparable procedures” means
11 medical procedures that are similar in terms of
12 health and safety risks to the patient, complexity, or
13 the clinical setting that is indicated.

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

17 (6) STATE.—The term “State” includes the
18 District of Columbia, the Commonwealth of Puerto
19 Rico, and each territory and possession of the
20 United States, and any subdivision of any of the
21 foregoing, including any unit of local government,
22 such as a county, city, town, village, or other general
23 purpose political subdivision of a State.

24 (7) VIABILITY.—The term “viability” means
25 the point in a pregnancy at which, in the good-faith

1 medical judgment of the treating health care pro-
2 vider, based on the particular facts of the case be-
3 fore the health care provider, there is a reasonable
4 likelihood of sustained fetal survival outside the
5 uterus with or without artificial support.

6 **SEC. 4. PERMITTED SERVICES.**

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

12 (1) A requirement that a health care provider
13 perform specific tests or medical procedures in con-
14 nection with the provision of abortion services, un-
15 less generally required for the provision of medically
16 comparable procedures.

17 (2) A requirement that the same health care
18 provider who provides abortion services also perform
19 specified tests, services, or procedures prior to or
20 subsequent to the abortion.

21 (3) A requirement that a health care provider
22 offer or provide the patient seeking abortion services
23 medically inaccurate information in advance of or
24 during abortion services.

1 (4) A limitation on a health care provider’s abil-
2 ity to prescribe or dispense drugs based on current
3 evidence-based regimens or the provider’s good-faith
4 medical judgment, other than a limitation generally
5 applicable to the medical profession.

6 (5) A limitation on a health care provider’s abil-
7 ity to provide abortion services via telemedicine,
8 other than a limitation generally applicable to the
9 provision of medical services via telemedicine.

10 (6) A requirement or limitation concerning the
11 physical plant, equipment, staffing, or hospital
12 transfer arrangements of facilities where abortion
13 services are provided, or the credentials or hospital
14 privileges or status of personnel at such facilities,
15 that is not imposed on facilities or the personnel of
16 facilities where medically comparable procedures are
17 performed.

18 (7) A requirement that, prior to obtaining an
19 abortion, a patient make one or more medically un-
20 necessary in-person visits to the provider of abortion
21 services or to any individual or entity that does not
22 provide abortion services.

23 (8) A prohibition on abortion at any point or
24 points in time prior to fetal viability, including a

1 prohibition or restriction on a particular abortion
2 procedure.

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

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

13 (11) A requirement that a patient seeking abor-
14 tion services at any point or points in time prior to
15 fetal viability disclose the patient's reason or reasons
16 for seeking abortion services, or a limitation on the
17 provision or obtaining of abortion services at any
18 point or points in time prior to fetal viability based
19 on any actual, perceived, or potential reason or rea-
20 sons of the patient for obtaining abortion services,
21 regardless of whether the limitation is based on a
22 health care provider's degree of actual or construc-
23 tive knowledge of such reason or reasons.

24 (b) OTHER LIMITATIONS OR REQUIREMENTS.—The
25 statutory right specified in subsection (a) shall not be lim-

1 ited or otherwise infringed through, in addition to the limi-
2 tations and requirements specified in paragraphs (1)
3 through (11) of subsection (a), any limitation or require-
4 ment that—

5 (1) is the same as or similar to one or more of
6 the limitations or requirements described in sub-
7 section (a); or

8 (2) both—

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

14 (B) impedes access to abortion services.

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

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

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

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

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

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

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

23 (7) The cumulative impact of the limitation or
24 requirement combined with other new or existing
25 limitations or requirements.

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

5 (1) the limitation or requirement significantly
6 advances the safety of abortion services or the health
7 of patients; and

8 (2) the safety of abortion services or the health
9 of patients cannot be advanced by a less restrictive
10 alternative measure or action.

11 **SEC. 5. APPLICABILITY AND PREEMPTION.**

12 (a) IN GENERAL.—

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

1 Freedom Restoration Act of 1993 (42 U.S.C.
2 2000bb et seq.).

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

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

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

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

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

15 (4) generally applicable State contract law.

16 (c) DEFENSE.—In any cause of action against an in-
17 dividual or entity who is subject to a limitation or require-
18 ment that violates this Act, in addition to the remedies
19 specified in section 8, this Act shall also apply to, and
20 may be raised as a defense by, such an individual or entity.

21 **SEC. 6. EFFECTIVE DATE.**

22 This Act shall take effect immediately upon the date
23 of enactment of this Act. This Act shall apply to all re-
24 strictions on the provision of, or access to, abortion serv-
25 ices whether the restrictions are enacted or imposed prior

1 to or after the date of enactment of this Act, except as
2 otherwise provided in this Act.

3 **SEC. 7. RULES OF CONSTRUCTION.**

4 (a) IN GENERAL.—In interpreting the provisions of
5 this Act, a court shall liberally construe such provisions
6 to effectuate the purposes of the Act.

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

14 (c) OTHER INDIVIDUALS CONSIDERED AS GOVERN-
15 MENT OFFICIALS.—Any person who, by operation of a
16 provision of Federal or State law, is permitted to imple-
17 ment or enforce a limitation or requirement that violates
18 section 4 of this Act shall be considered a government offi-
19 cial for purposes of this Act.

20 **SEC. 8. ENFORCEMENT.**

21 (a) ATTORNEY GENERAL.—The Attorney General
22 may commence a civil action on behalf of the United
23 States against any State that violates, or against any gov-
24 ernment official (including a person described in section
25 7(c)) that implements or enforces a limitation or require-

1 ment that violates, section 4. The court shall hold unlawful
2 and set aside the limitation or requirement if it is in viola-
3 tion of this Act.

4 (b) PRIVATE RIGHT OF ACTION.—

5 (1) IN GENERAL.—Any individual or entity, in-
6 cluding any health care provider or patient, ad-
7 versely affected by an alleged violation of this Act,
8 may commence a civil action against any State that
9 violates, or against any government official (includ-
10 ing a person described in section 7(c)) that imple-
11 ments or enforces a limitation or requirement that
12 violates, section 4. The court shall hold unlawful and
13 set aside the limitation or requirement if it is in vio-
14 lation of this Act.

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

20 (c) EQUITABLE RELIEF.—In any action under this
21 section, the court may award appropriate equitable relief,
22 including temporary, preliminary, or permanent injunctive
23 relief.

24 (d) COSTS.—In any action under this section, the
25 court shall award costs of litigation, as well as reasonable

1 attorney's fees, to any prevailing plaintiff. A plaintiff shall
2 not be liable to a defendant for costs or attorney's fees
3 in any non-frivolous action under this section.

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

9 (f) ABROGATION OF STATE IMMUNITY.—Neither a
10 State that enforces or maintains, nor a government official
11 (including a person described in section 7(c)) who is per-
12 mitted to implement or enforce any limitation or require-
13 ment that violates section 4 shall be immune under the
14 Tenth Amendment to the Constitution of the United
15 States, the Eleventh Amendment to the Constitution of
16 the United States, or any other source of law, from an
17 action in a Federal or State court of competent jurisdic-
18 tion challenging that limitation or requirement.

19 **SEC. 9. SEVERABILITY.**

20 If any provision of this Act, or the application of such
21 provision to any person, entity, government, or cir-
22 cumstance, is held to be unconstitutional, the remainder
23 of this Act, or the application of such provision to all other

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