117TH CONGRESS
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H. R. 8373

IN THE SENATE OF THE UNITED STATES

JULY 21, 2022
Received

AN ACT

To protect a person's ability to access contraceptives and to engage in contraception, and to protect a health care provider's ability to provide contraceptives, contraception, and information related to contraception.

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 ''Right to Contraception Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONTRACEPTION.—The term ''contraception'' means an action taken to prevent pregnancy, including the use of contraceptives or fertility-awareness based methods, and sterilization procedures.

(2) CONTRACEPTIVE.—The term ''contraceptive'' means any drug, device, or biological product intended for use in the prevention of pregnancy, whether specifically intended to prevent pregnancy or for other health needs, that is legally marketed under the Federal Food, Drug, and Cosmetic Act, such as oral contraceptives, long-acting reversible contraceptives, emergency contraceptives, internal and external condoms, injectables, vaginal barrier methods, transdermal patches, and vaginal rings, or other contraceptives.

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

(4) HEALTH CARE PROVIDER.—The term ''health care provider'' means, with respect to a

State, any entity or individual (including any physician, certified nurse-midwife, nurse, nurse practitioner, physician assistant, and pharmacist) that is licensed or otherwise authorized by the State to provide health care services.

(5) STATE.—The term ''State'' includes each of the 50 States, 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.

SEC. 3. FINDINGS.

Congress finds the following:

(1) The right to contraception is a fundamental right, central to a person's privacy, health, wellbeing, dignity, liberty, equality, and ability to participate in the social and economic life of the Nation.

(2) The Supreme Court has repeatedly recognized the constitutional right to contraception.

(3) In Griswold v. Connecticut (381 U.S. 479 (1965)), the Supreme Court first recognized the con-

stitutional right for married people to use contraceptives.

(4) In Eisenstadt v. Baird (405 U.S. 438 (1972)), the Supreme Court confirmed the constitutional right of all people to legally access contraceptives regardless of marital status.

(5) In Carey v. Population Services International (431 U.S. 678 (1977)), the Supreme Court affirmed the constitutional right to contraceptives for minors.

(6) The right to contraception has been repeatedly recognized internationally as a human right. The United Nations Population Fund has published several reports outlining family planning as a basic human right that advances women's health, economic empowerment, and equality.

(7) Access to contraceptives is internationally recognized by the World Health Organization as advancing other human rights such as the right to life, liberty, expression, health, work, and education.

(8) Contraception is safe, essential health care, and access to contraceptive products and services is central to people's ability to participate equally in economic and social life in the United States and

globally. Contraception allows people to make decisions about their families and their lives.

(9) Contraception is key to sexual and reproductive health. Contraception is critical to preventing unintended pregnancy and many contraceptives are highly effective in preventing and treating a wide array of often severe medical conditions and decrease the risk of certain cancers.

(10) Family planning improves health outcomes for women, their families, and their communities and reduces rates of maternal and infant mortality and morbidity.

(11) The United States has a long history of reproductive coercion, including the childbearing forced upon enslaved women, as well as the forced sterilization of Black women, Puerto Rican women, indigenous women, immigrant women, and disabled women, and reproductive coercion continues to occur.

(12) The right to make personal decisions about contraceptive use is important for all Americans, and is especially critical for historically marginalized groups, including Black, indigenous, and other people of color; immigrants; LGBTQ people; people with disabilities; people with low incomes; and people liv-

ing in rural and underserved areas. Many people who are part of these marginalized groups already face barriers—exacerbated by social, political, economic, and environmental inequities—to comprehensive health care, including reproductive health care, that reduce their ability to make decisions about their health, families, and lives.

(13) State and Federal policies governing pharmaceutical and insurance policies affect the accessibility of contraceptives, and the settings in which contraception services are delivered.

(14) People engage in interstate commerce to access contraception services.

(15) To provide contraception services, health care providers employ and obtain commercial services from doctors, nurses, and other personnel who engage in interstate commerce and travel across State lines.

(16) Congress has the authority to enact this Act to protect access to contraception 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.

(17) Congress has used its authority in the past to protect and expand access to contraception information, products, and services.

(18) In 1970, Congress established the family planning program under title X of the Public Health Service Act (42 U.S.C. 300 et seq.), the only Federal grant program dedicated to family planning and related services, providing access to information, products, and services for contraception.

(19) In 1972, Congress required the Medicaid program to cover family planning services and supplies, and the Medicaid program currently accounts for 75 percent of Federal funds spent on family planning.

(20) In 2010, Congress enacted the Patient Protection and Affordable Care Act (Public Law 111–148) (referred to in this section as the ''ACA''). Among other provisions, the ACA included provisions to expand the affordability and accessibility of contraception by requiring health insurance plans to

provide coverage for preventive services with no patient cost-sharing.

(21) Despite the clearly established constitutional right to contraception, access to contraceptives, including emergency contraceptives and long-acting reversible contraceptives, has been obstructed across the United States in various ways by Federal and State governments.

(22) As of 2022, at least 4 States tried to ban access to some or all contraceptives by restricting access to public funding for these products and services. Furthermore, Arkansas, Mississippi, Missouri, and Texas have infringed on people's ability to access their contraceptive care by violating the free choice of provider requirement under the Medicaid program.

(23) Providers' refusals to offer contraceptives and information related to contraception based on their own personal beliefs impede patients from obtaining their preferred method, with laws in 12 States as of the date of introduction of this Act specifically allowing health care providers to refuse to provide services related to contraception.

(24) States have attempted to define abortion expansively so as to include contraceptives in State

bans on abortion and have also restricted access to emergency contraception.

(25) In June 2022, Justice Thomas, in his concurring opinion in Dobbs v. Jackson Women's Health Organization (597 U.S. ____ (2022)), stated that the Supreme Court ''should reconsider all of this Court's substantive due process precedents, including Griswold, Lawrence, and Obergefell'' and that the Court has ''a duty to correct the error established in those precedents'' by overruling them.

(26) In order to further public health and to combat efforts to restrict access to reproductive health care, congressional action is necessary to protect access to contraceptives, contraception, and information related to contraception for everyone, regardless of actual or perceived race, ethnicity, sex (including gender identity and sexual orientation), income, disability, national origin, immigration status, or geography.

SEC. 4. PERMITTED SERVICES.

(a) GENERAL RULE.—A person has a statutory right under this Act to obtain contraceptives and to engage in contraception, and a health care provider has a corresponding right to provide contraceptives, contraception, and information related to contraception.

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

(1) expressly, effectively, implicitly, or as implemented singles out the provision of contraceptives, contraception, or contraception-related information; health care providers who provide contraceptives, contraception, or contraception-related information; or facilities in which contraceptives, contraception, or contraception-related information is provided; and

(2) impedes access to contraceptives, contraception, or contraception-related information.

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

(1) the limitation or requirement significantly advances access to contraceptives, contraception, and information related to contraception; and

(2) access to contraceptives, contraception, and information related to contraception or the health of patients cannot be advanced by a less restrictive alternative measure or action.

SEC. 5. APPLICABILITY AND PREEMPTION.

(a) IN GENERAL.—

(1) GENERAL APPLICATION.—Except as stated under subsection (b), this Act supersedes and applies to the law of the Federal Government and each State government, and the implementation of such law, whether statutory, common law, or otherwise, and whether adopted before or after the date of enactment of this Act, and neither the Federal Government nor any State government shall 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) SUBSEQUENTLY ENACTED FEDERAL LEGISLATION.—Federal statutory law adopted after the date of the enactment of this Act is 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 otherwise affect any provision of Federal law relating to coverage under (and shall not be construed as requiring the provision of specific benefits under) group health plans or group or individual health insurance cov-

erage or coverage under a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f))), including coverage provided under section 1905(a)(4)(C) of the Social Security Act (42 U.S.C. 1396d(a)(4)(C)) and section 2713 of Public Health Service Act (42 U.S.C. 300gg–13).

(c) DEFENSE.—In any cause of action against an individual or entity who is subject to a limitation or requirement that violates this Act, in addition to the remedies specified in section 7, this Act shall also apply to, and may be raised as a defense by, such an individual or entity.

(d) EFFECTIVE DATE.—This Act shall take effect immediately upon the date of enactment of this Act.

SEC. 6. RULES OF CONSTRUCTION.

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

(b) RULES OF CONSTRUCTION.—Nothing in this Act shall be construed—

(1) to authorize any government to interfere with a health care provider's ability to provide contraceptives or information related to contraception or a patient's ability to obtain contraceptives or to engage in contraception; or

(2) to permit or sanction the conduct of any sterilization procedure without the patient's voluntary and informed consent.

(c) OTHER INDIVIDUALS CONSIDERED AS 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 shall be considered a government official for purposes of this Act.

SEC. 7. ENFORCEMENT.

(a) ATTORNEY GENERAL.—The Attorney General may commence a civil action on behalf of the United States against any State that violates, or against any government official (including a person described in section 6(c)) that implements or enforces a limitation or requirement that violates, section 4. The court shall hold unlawful and set aside the limitation or requirement if it is in violation of this Act.

(b) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—Any individual or entity, including any health care provider or patient, adversely affected by an alleged violation of this Act, may commence a civil action against any State that violates, or against any government official (including a person described in section 6(c)) that imple-

ments or enforces a limitation or requirement that violates, section 4. The court shall hold unlawful and set aside the limitation or requirement if it is 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) EQUITABLE RELIEF.—In any action under this section, the court may award appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief.

(d) 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.

(e) 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.

(f) ABROGATION OF STATE IMMUNITY.—Neither a State that enforces or maintains, nor a government official

(including a person described in section 6(c)) who is permitted to implement or enforce any limitation or requirement that violates section 4 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.

SEC. 8. 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.

Passed the House of Representatives July 21, 2022.

Attest: CHERYL L. JOHNSON,

Clerk.