

118TH CONGRESS  
1ST SESSION

# H. R. 461

To amend title 18, United States Code, to prohibit discrimination by abortion against an unborn child on the basis of Down syndrome.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2023

Mr. ESTES (for himself, Mr. ADERHOLT, Mr. BANKS, Mr. FEENSTRA, Mr. GAETZ, Mr. HIGGINS of Louisiana, Mr. KELLY of Mississippi, Mrs. MILLER of Illinois, Mr. SMITH of New Jersey, and Mr. STAUBER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to prohibit discrimination by abortion against an unborn child on the basis of Down syndrome.

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 “Protecting Individuals  
5 with Down Syndrome Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) On June 24, 2022, the United States Su-  
9 preme Court issued a decision in *Dobbs v. Jackson*

1 Women’s Health Organization (No. 19–1392, 2022  
2 WL 2276808 (2022)), which overturned its prior,  
3 egregiously wrong holding in *Roe v. Wade* (410 U.S.  
4 113 (1973)).

5 (2) Dobbs correctly affirmed that there is no  
6 constitutional right to abort an unborn child and  
7 that the Court’s prior decision in *Roe* was not based  
8 in the Constitution’s text nor was it deeply rooted in  
9 the history and tradition of the United States.

10 (3) Federal law protects individuals with dis-  
11 abilities against discrimination, including in the pro-  
12 vision of medical care.

13 (4) As Congress has previously affirmed,  
14 “[d]isability is a natural part of the human experi-  
15 ence and in no way diminishes the right of individ-  
16 uals to live independently, enjoy self-determination,  
17 make choices, contribute to society, pursue meaning-  
18 ful careers, and enjoy full inclusion and integration  
19 in the economic, political, social, and educational  
20 mainstream of American society.”.

21 (5) It is the policy of the United States to re-  
22 spect the lives and the dignity of individuals with  
23 disabilities, including individuals with Down syn-  
24 drome.

1           (6) Federal, State, and local government all  
2           have a role to play in preventing discrimination  
3           based on disability, including discrimination against  
4           individuals with Down syndrome.

5           (7) Consistent with the overarching Federal  
6           policy of nondiscrimination, and in light of the  
7           shameful history of targeting unborn children for  
8           abortion based on race, gender, or disabilities, Con-  
9           gress must combat invidious discrimination by pro-  
10          hibiting doctors from aborting unborn children be-  
11          cause the unborn child has been diagnosed with  
12          Down syndrome.

13          (8) Tragically, in some countries that have  
14          failed to protect unborn children diagnosed with  
15          Down syndrome, virtually every unborn child diag-  
16          nosed with Down syndrome is aborted.

17          (9) Individuals with Down syndrome are inher-  
18          ently valuable and worthy of dignity and respect.  
19          They enrich and strengthen our society in countless  
20          ways, including but not limited to by building mean-  
21          ingful relationships, participating in and creating  
22          families, learning, and working alongside other  
23          Americans.

1 **SEC. 3. DISCRIMINATION BY ABORTION AGAINST AN UN-**  
2 **BORN CHILD ON THE BASIS OF DOWN SYN-**  
3 **DROME PROHIBITED.**

4 (a) IN GENERAL.—Chapter 13 of title 18, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing:

7 **“§ 250. Discrimination by abortion against an unborn**  
8 **child on the basis of Down syndrome pro-**  
9 **hibited**

10 “(a) DEFINITIONS.—In this section:

11 “(1) ABORTION.—The term ‘abortion’ means  
12 the act of using or prescribing any instrument, med-  
13 icine, drug, or any other substance, device, or means  
14 with the intent to—

15 “(A) kill the unborn child of a woman  
16 known to be pregnant; or

17 “(B) terminate the pregnancy of a woman  
18 known to be pregnant, with an intention other  
19 than—

20 “(i) to produce a live birth and pre-  
21 serve the life and health of the child born  
22 alive;

23 “(ii) to save the life of the pregnant  
24 woman; or

25 “(iii) to remove a dead unborn child.

1           “(2) DOWN SYNDROME.—The term ‘Down syn-  
2           drome’ means a chromosomal disorder associated  
3           with—

4                   “(A) an extra copy of the chromosome 21,  
5                   in whole or in part; or

6                   “(B) an effective trisomy for chromosome  
7                   21.

8           “(3) QUALIFIED PLAINTIFF.—The term ‘quali-  
9           fied plaintiff’ means—

10                   “(A) a woman upon whom an abortion is  
11                   performed or attempted in violation of this sec-  
12                   tion;

13                   “(B) a maternal grandparent of the un-  
14                   born child if the woman upon whom an abortion  
15                   is performed or attempted in violation of this  
16                   section is an unemancipated minor;

17                   “(C) the father of an unborn child who is  
18                   the subject of an abortion performed or at-  
19                   tempted in violation of this section unless the  
20                   pregnancy or abortion resulted from the crimi-  
21                   nal conduct of the father; or

22                   “(D) the Attorney General.

23           “(4) UNBORN CHILD.—The term ‘unborn child’  
24           means an individual of the species homo sapiens  
25           from the beginning of the biological development of

1 that individual, including fertilization, until the point  
2 of being born alive, as defined in section 8(b) of title  
3 1.

4 “(b) OFFENSE.—It shall be unlawful to—

5 “(1) perform an abortion—

6 “(A) with the knowledge that a pregnant  
7 woman is seeking an abortion, in whole or in  
8 part, on the basis of—

9 “(i) a test result indicating that the  
10 unborn child has Down syndrome;

11 “(ii) a prenatal diagnosis that the un-  
12 born child has Down syndrome; or

13 “(iii) any other reason to believe that  
14 the unborn child has or may have Down  
15 syndrome; or

16 “(B) without first—

17 “(i) asking the pregnant woman if she  
18 is aware of any test results, prenatal diag-  
19 nosis, or any other evidence that the un-  
20 born child has or may have Down syn-  
21 drome; and

22 “(ii) if the woman is aware that the  
23 unborn child has or may have Down syn-  
24 drome, informing the pregnant woman of

1           the prohibitions on abortion under this sec-  
2           tion;

3           “(2) use force or the threat of force to inten-  
4           tionally injure or intimidate any person for the pur-  
5           pose of coercing an abortion described in paragraph  
6           (1)(A);

7           “(3) solicit or accept funds for the performance  
8           of an abortion described in paragraph (1)(A); or

9           “(4) knowingly transport a woman into the  
10          United States or across a State line for the purpose  
11          of obtaining an abortion described in paragraph  
12          (1)(A).

13          “(c) CRIMINAL PENALTY.—Any person that violates,  
14          or attempts to violate, subsection (b) shall be fined under  
15          this title, imprisoned not more than 5 years, or both.

16          “(d) CIVIL REMEDIES.—

17                 “(1) CIVIL ACTION BY WOMAN ON WHOM ABOR-  
18                 TION IS PERFORMED.—A woman upon whom an  
19                 abortion has been performed or attempted in viola-  
20                 tion of subsection (b)(2) may bring a civil action in  
21                 an appropriate court against any person who en-  
22                 gaged in a violation of subsection (b)(2) to obtain  
23                 appropriate relief.

24                 “(2) CIVIL ACTION BY RELATIVES.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), the father of an unborn  
3           child who is the subject of an abortion per-  
4           formed or attempted in violation of subsection  
5           (b), or a maternal grandparent of the unborn  
6           child if the pregnant woman is an  
7           unemancipated minor, may bring a civil action  
8           in an appropriate court against any person who  
9           engaged in the violation to obtain appropriate  
10          relief.

11          “(B) EXCEPTIONS.—Subparagraph (A)  
12          shall not apply if—

13                 “(i) the pregnancy or abortion re-  
14                 sulted from the criminal conduct of the  
15                 plaintiff described in subparagraph (A); or

16                 “(ii) the plaintiff described in sub-  
17                 paragraph (A) consented to the abortion.

18          “(3) APPROPRIATE RELIEF.—Appropriate relief  
19          in a civil action under this subsection includes—

20                 “(A) objectively verifiable money damages  
21                 for all injuries, psychological and physical, in-  
22                 cluding loss of companionship and support, oc-  
23                 casioned by the violation of this section; and

24                 “(B) punitive damages.



1           “(4) INJUNCTIVE RELIEF.—A qualified plaintiff  
2           may bring a civil action in an appropriate court to  
3           obtain injunctive relief to prevent an abortion pro-  
4           vider from performing or attempting further abor-  
5           tions in violation of this section.

6           “(5) ATTORNEY’S FEES FOR PLAINTIFF.—The  
7           court shall award a reasonable attorney’s fee as part  
8           of the costs to a prevailing plaintiff in a civil action  
9           under this subsection.

10          “(e) BAR TO PROSECUTION.—A woman upon whom  
11          an abortion is performed may not be prosecuted or held  
12          civilly liable for any violation of this section or for a con-  
13          spiracy to violate this section.

14          “(f) LOSS OF FEDERAL FUNDING.—A violation of  
15          subsection (b) shall be deemed discrimination for the pur-  
16          poses of section 504 of the Rehabilitation Act of 1973 (29  
17          U.S.C. 794).

18          “(g) REPORTING REQUIREMENT.—

19                 “(1) IN GENERAL.—A physician, physician’s as-  
20                 sistant, nurse, counselor, or other medical or mental  
21                 health professional shall report known or suspected  
22                 violations of any of this section to appropriate law  
23                 enforcement authorities.

1           “(2) CRIMINAL PENALTY.—Any person who vio-  
2           lates paragraph (1) shall be fined under this title,  
3           imprisoned not more than 1 year, or both.

4           “(h) EXPEDITED CONSIDERATION.—It shall be the  
5           duty of the district courts of the United States, the courts  
6           of appeals of the United States, and the Supreme Court  
7           of the United States to advance on the docket and to expe-  
8           dite to the greatest possible extent the disposition of any  
9           matter brought under this section.

10          “(i) PROTECTION OF PRIVACY IN COURT PRO-  
11          CEEDINGS.—

12                 “(1) IN GENERAL.—Except to the extent the  
13                 Constitution of the United States or other similarly  
14                 compelling reason requires, in every civil or criminal  
15                 action under this section, the court shall make such  
16                 orders as are necessary to protect the anonymity of  
17                 any woman upon whom an abortion has been per-  
18                 formed or attempted if she does not give her written  
19                 consent to such disclosure. Such orders may be  
20                 made upon motion, but shall be made sua sponte if  
21                 not otherwise sought by a party.

22                 “(2) ORDERS TO PARTIES, WITNESSES, AND  
23                 COUNSEL.—The court shall issue appropriate orders  
24                 to the parties, witnesses, and counsel and shall di-  
25                 rect the sealing of the record and exclusion of indi-

1       viduals from courtrooms or hearing rooms to the ex-  
2       tent necessary to safeguard the identity of a woman  
3       described in paragraph (1) from public disclosure.

4               “(3) PSEUDONYM REQUIRED.—In the absence  
5       of written consent of the woman upon whom an  
6       abortion has been performed or attempted, any  
7       party, other than a public official, who brings an ac-  
8       tion under this section shall do so under a pseu-  
9       donym.

10              “(4) LIMITATION.—This subsection may not be  
11       construed to conceal the identity of the plaintiff or  
12       of witnesses from the defendant or from attorneys  
13       for the defendant.

14              “(j) RULE OF CONSTRUCTION.—

15              “(1) GREATER PROTECTION.—Nothing in this  
16       section may be construed to pre-empt or limit any  
17       Federal, State, or local law that provides greater  
18       protections for an unborn child than those provided  
19       in this section.

20              “(2) CREATING OR RECOGNIZING RIGHT.—  
21       Nothing in this section shall be construed as cre-  
22       ating or recognizing a right to abortion nor shall it  
23       make lawful an abortion that is otherwise unlawful  
24       under Federal, State, or local law.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 of chapter 13 of title 18, United States Code, is amended  
3 by adding at the end the following:

“250. Discrimination by abortion against an unborn child on the basis of Down  
syndrome prohibited.”.

4 **SEC. 4. SEVERABILITY.**

5 If any portion of this Act, or the amendments made  
6 by this Act, or the application thereof to any person or  
7 circumstance is held invalid, such invalidity shall not af-  
8 fect the portions or applications of this Act which can be  
9 given effect without the invalid portion or application.

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