Comparing the HCBS Access Act and the Latonya Reeves Freedom Act

Dimension	HCBS Access Act (H.R. 8540 / S.5321)	Latonya Reeves Freedom Act (H.R. 9401 / S.4865)
Legal theory	Amends Medicaid (Title XIX, Social Security Act) — a funding/benefits statute	Amends civil rights law — creates a freestanding ADA/Section 504-style statutory right
What it guarantees	A service (HCBS) becomes a mandatory Medicaid benefit for eligible individuals	A judicially enforceable right to receive LTSS in the setting of one's choice
Eligibility gate	Functional impairment test (2+ ADLs/IADLs) plus Medicaid financial eligibility	Any individual with an "LTSS disability" (defined as someone who is or may be institutionalized) regardless of type of disability, Medicaid eligibility, or income level
Enforcement mechanism	Enforcement depends on Executive Branch or administration: including Medicaid State Plan compliance, CMS oversight, State Medicaid Director letters, HCBS ombudsman	Private right of action in federal court; injunctive relief available for Disabled people independent of the administration in the White House
Fundamental alteration defense	Not addressed — remains fully available to states/insurers as an Olmstead-derived defense	Legislation eliminates the fundamental-alteration loophole that forces people into institutions
Treating-professional sign-off	Individualized assessment required, conducted by state-approved/State-selected assessor	Eliminates this barrier to community living and gives control to the Disabled individual, rather than medical professionals
Reliance on regulation	Cross-references the existing HCBS settings rule (42 C.F.R. § 441.710(a)) by citation; any administration could modify the referenced regulation to undermine the bill's impact	Independent statutory text — does not depend on the settings rule's survival
Exposure to Texas v. Kennedy / Loper Bright	Moderate-to-high — cross-references 42 C.F.R. § 441.710 by citation rather than standing on its own statutory text, exposing it to Loper Bright-style deference challenges	Designed specifically to be insulated from this exposure; introduced days after the OLC memo
Funding mechanism	100% federal Medicaid match (FMAP) conditioned on state compliance steps	No federal funding stream — like the ADA, it's a rights/enforcement statute, not a spending program

Dimension	HCBS Access Act (H.R. 8540 / S.5321)	Latonya Reeves Freedom Act (H.R. 9401 / S.4865)
Risk of Reversal	High — as a funding bill, this legislation can be changed through budget reconciliation which only requires a simple majority in the Senate	Low – as a civil rights bill, it would require 60 votes in the Senate to change the law; Congress has never reversed or repealed civil rights legislation it passed
Care of others	Not addressed	Defines IADLs to include 'care of others", ensuring that impacted individuals have the opportunity to lead a full like that includes children and pets
Congregate care (assisted living)	Adds assisted living as a newly guaranteed HCBS service category; the legislation does not include an integration hierarchy so it doesn't prevent people with significant disabilities from being forced into group living.	Legislation treats institutionalization and congregate placement as harms to remedy while leaving them as options people can choose
Housing	Limited — covers transitional/homelessness-related housing support only	Explicit provision requiring access to integrated housing options which are not tied to services and supports
Congressional support	Limited – with 14 Democratic House cosponsors in the 119th Congress	Robust - Has twice exceeded a majority of members in the House of Representatives (236 and 220); locked down by House leadership
Bipartisan support	Partisan framing and language; None to date across all introductions of this legislation	Written to be bipartisan; Has drawn notable Republican cosponsorship across every version of the bill and been sponsored in the House by two Republicans
Estimated cost	Very high — dramatically increases federal Medicaid share and eligibility for HCBS in an open-ended new federal Medicaid entitlement	Direct federal cost is comparatively modest as this is a rights/enforcement statute
Relationship to workforce/labor interests	Direct — wage pass-through, rate review, and labor-neutrality provisions built into the bill	Not a workforce bill — addresses the right to services which includers a wage that secures needed workforce but does not include pro-union measures to preserve bipartisan support