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S. 1696

To protect a woman’s right to determine whether and when to bear a child or end a pregnancy by limiting restrictions on the provision of abortion services.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2013

Mr. BLUMENTHAL (for himself, Ms. BALDWIN, Mrs. BOXER, Mr. SCHATZ, Ms. HIRONO, Mr. HARKIN, Mr. WHITEHOUSE, Mr. SANDERS, Mr. SCHUMER, Mrs. MURRAY, Mrs. GILLIBRAND, Ms. CANTWELL, Mr. MURPHY, Mr. BROWN, Ms. WARREN, Mr. TESTER, Mr. MENENDEZ, Mr. HEINRICH, Mr. COONS, Mr. MARKEY, Mr. MERKLEY, Mrs. SHAHEEN, Ms. MIKULSKI, Mr. BOOKER, Mrs. FEINSTEIN, Ms. STABENOW, Mr. WYDEN, Mr. FRANKEN, Ms. KLOBUCHAR, Mr. CARDIN, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect a woman’s right to determine whether and when to bear a child or end a pregnancy by limiting restrictions on the provision of 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 2013”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

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

3 (1) Access to safe, legal abortion services is es-
4 sential to women’s health and central to women’s
5 ability to participate equally in the economic and so-
6 cial life of the United States.

7 (2) Access to safe, legal abortion services has
8 been hindered in the United States in various ways,
9 including blockades of health care facilities and asso-
10 ciated violence; restrictions on insurance coverage;
11 restrictions on minors’ ability to obtain services; and
12 requirements and restrictions that single out abor-
13 tion providers and those seeking their services, and
14 which do not further women’s health or the safety
15 of abortion, but harm women by reducing the avail-
16 ability of services.

17 (3) In the early 1990s, protests and blockades
18 at health care facilities where abortions were per-
19 formed, and associated violence, increased dramati-
20 cally and reached crisis level, requiring Congres-
21 sional action. Congress passed the Freedom of Ac-
22 cess to Clinic Entrances Act (Public Law 103–259)
23 to address that situation and ensure that women
24 could physically access abortion services.

25 (4) Since 2010, there has been an equally dra-
26 matic increase in the number of laws and regulations

1 singling out abortion that threaten women’s health
2 and their ability to access safe abortion services by
3 interfering with health care professionals’ ability to
4 provide such services. Congressional action is now
5 necessary to put an end to these restrictions. In ad-
6 dition, there has been a dramatic increase in the
7 passage of laws that blatantly violate the constitu-
8 tional protections afforded women, such as bans on
9 abortions prior to viability.

10 (5) Legal abortion is one of the safest medical
11 procedures in the United States. That safety is
12 furthered by regulations that are based on science
13 and are generally applicable to the medical profes-
14 sion or to medically comparable procedures.

15 (6) Many State and local governments are im-
16 posing restrictions on the provision of abortion that
17 are neither science-based nor generally applicable to
18 the medical profession or to medically comparable
19 procedures. Though described by their proponents as
20 health and safety regulations, many of these abor-
21 tion-specific restrictions do not advance the safety of
22 abortion services and do nothing to protect women’s
23 health. Also, these restrictions interfere with wom-
24 en’s personal and private medical decisions, make
25 access to abortion more difficult and costly, and

1 even make it impossible for some women to obtain
2 those services.

3 (7) These restrictions harm women's health by
4 reducing access not only to abortion services but also
5 to the other essential health care services offered by
6 the providers targeted by the restrictions, including
7 contraceptive services, which reduce unintended
8 pregnancies and thus abortions, and screenings for
9 cervical cancer and sexually transmitted infections.
10 These harms fall especially heavily on low-income
11 women, women of color, and women living in rural
12 and other medically underserved areas.

13 (8) The cumulative effect of these numerous re-
14 strictions has been widely varying access to abortion
15 services such that a woman's ability to exercise her
16 constitutional rights is dependent on the State in
17 which she lives. Federal legislation putting a stop to
18 harmful restrictions throughout the United States is
19 necessary to ensure that women in all States have
20 access to safe abortion services, an essential con-
21 stitutional right repeatedly affirmed by the United
22 States Supreme Court.

23 (9) Congress has the authority to protect wom-
24 en's ability to access abortion services pursuant to
25 its powers under the Commerce Clause and its pow-

1 ers under section 5 of the Fourteenth Amendment to
2 the Constitution to enforce the provisions of section
3 1 of the Fourteenth Amendment.

4 (b) PURPOSE.—It is the purpose of this Act to pro-
5 tect women’s health by ensuring that abortion services will
6 continue to be available and that abortion providers are
7 not singled out for medically unwarranted restrictions that
8 harm women by preventing them from accessing safe abor-
9 tion services. It is not the purpose of this Act to address
10 all threats to access to abortion (for example, this Act does
11 not apply to clinic violence, restrictions on insurance cov-
12 erage of abortion, or requirements for parental consent or
13 notification before a minor may obtain an abortion) which
14 Congress should address through separate legislation as
15 appropriate.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) ABORTION.—The term “abortion” means
19 any medical treatment, including the prescription of
20 medication, intended to cause the termination of a
21 pregnancy except for the purpose of increasing the
22 probability of a live birth, to remove an ectopic preg-
23 nancy, or to remove a dead fetus.

1 (2) ABORTION PROVIDER.—The term “abortion
2 provider” means a health care professional who per-
3 forms abortions.

4 (3) GOVERNMENT.—The term “government”
5 includes a branch, department, agency, instrumen-
6 tality, or individual acting under color of law of the
7 United States, a State, or a subdivision of a State.

8 (4) HEALTH CARE PROFESSIONAL.—The term
9 “health care professional” means a licensed medical
10 professional (including physicians, certified nurse-
11 midwives, nurse practitioners, and physician assist-
12 ants) who is competent to perform abortions based
13 on clinical training.

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 each of
18 the 50 States, the District of Columbia, the Com-
19 monwealth of Puerto Rico, and each territory or pos-
20 session of the United States.

21 (7) VIABILITY.—The term “viability” means
22 the point in a pregnancy at which, in the good-faith
23 medical judgment of the treating health care profes-
24 sional, based on the particular facts of the case be-
25 fore her or him, there is a reasonable likelihood of

1 sustained fetal survival outside the uterus with or
2 without artificial support.

3 **SEC. 4. PROHIBITED MEASURES AND ACTIONS.**

4 (a) GENERAL PROHIBITIONS.—The following limita-
5 tions or requirements are unlawful and shall not be im-
6 posed or applied by any government because they single
7 out the provision of abortion services for restrictions that
8 are more burdensome than those restrictions imposed on
9 medically comparable procedures, they do not significantly
10 advance women’s health or the safety of abortion services,
11 and they make abortion services more difficult to access:

12 (1) A requirement that a medical professional
13 perform specific tests or follow specific medical pro-
14 cedures in connection with the provision of an abor-
15 tion, unless generally required for the provision of
16 medically comparable procedures.

17 (2) A limitation on an abortion provider’s abil-
18 ity to delegate tasks, other than a limitation gen-
19 erally applicable to providers of medically com-
20 parable procedures.

21 (3) A limitation on an abortion provider’s abil-
22 ity to prescribe or dispense drugs based on her or
23 his good-faith medical judgment, other than a limi-
24 tation generally applicable to the medical profession.

1 (4) A limitation on an abortion provider’s abil-
2 ity to provide abortion services via telemedicine,
3 other than a limitation generally applicable to the
4 provision of medical services via telemedicine.

5 (5) A requirement or limitation concerning the
6 physical plant, equipment, staffing, or hospital
7 transfer arrangements of facilities where abortions
8 are performed, or the credentials or hospital privi-
9 leges or status of personnel at such facilities, that is
10 not imposed on facilities or the personnel of facilities
11 where medically comparable procedures are per-
12 formed.

13 (6) A requirement that, prior to obtaining an
14 abortion, a woman make one or more medically un-
15 necessary visits to the provider of abortion services
16 or to any individual or entity that does not provide
17 abortion services.

18 (7) A requirement or limitation that prohibits
19 or restricts medical training for abortion procedures,
20 other than a requirement or limitation generally ap-
21 plicable to medical training for medically comparable
22 procedures.

23 (b) OTHER PROHIBITED MEASURES OR ACTIONS.—

24 (1) IN GENERAL.—A measure or action that re-
25 stricts the provision of abortion services or the facili-

1 ties that provide abortion services that is similar to
2 any of the prohibited limitations or requirements de-
3 scribed in subsection (a) shall be unlawful if such
4 measure or action singles out abortion services or
5 make abortions services more difficult to access and
6 does not significantly advance women's health or the
7 safety of abortion services.

8 (2) PRIMA FACIE CASE.—To make a prima
9 facie showing that a measure or action is unlawful
10 under paragraph (1) a plaintiff shall demonstrate
11 that the measure or action involved—

12 (A) singles out the provision of abortion
13 services or facilities in which abortion services
14 are performed; or

15 (B) impedes women's access to abortion
16 services based on one or more of the factors de-
17 scribed in paragraph (3).

18 (3) FACTORS.—Factors for a court to consider
19 in determining whether a measure or action impedes
20 access to abortion services for purposes of paragraph
21 (2)(B) include the following:

22 (A) Whether the measure or action inter-
23 feres with an abortion provider's ability to pro-
24 vide care and render services in accordance with
25 her or his good-faith medical judgment.

1 (B) Whether the measure or action is rea-
2 sonably likely to delay some women in accessing
3 abortion services.

4 (C) Whether the measure or action is rea-
5 sonably likely to directly or indirectly increase
6 the cost of providing abortion services or the
7 cost for obtaining abortion services (including
8 costs associated with travel, childcare, or time
9 off work).

10 (D) Whether the measure or action re-
11 quires, or is reasonably likely to have the effect
12 of necessitating, a trip to the offices of the
13 abortion provider that would not otherwise be
14 required.

15 (E) Whether the measure or action is rea-
16 sonably likely to result in a decrease in the
17 availability of abortion services in the State.

18 (F) Whether the measure or action im-
19 poses criminal or civil penalties that are not im-
20 posed on other health care professionals for
21 comparable conduct or failure to act or that are
22 harsher than penalties imposed on other health
23 care professionals for comparable conduct or
24 failure to act.

1 (G) The cumulative impact of the measure
2 or action combined with other new or existing
3 requirements or restrictions.

4 (4) DEFENSE.—A measure or action shall be
5 unlawful under this subsection upon making a prima
6 facie case (as provided for under paragraph (2)), un-
7 less the defendant establishes, by clear and con-
8 vincing evidence, that—

9 (A) the measure or action significantly ad-
10 vances the safety of abortion services or the
11 health of women; and

12 (B) the safety of abortion services or the
13 health of women cannot be advanced by a less
14 restrictive alternative measure or action.

15 (c) OTHER PROHIBITIONS.—The following restric-
16 tions on the performance of abortion are unlawful and
17 shall not be imposed or applied by any government:

18 (1) A prohibition or ban on abortion prior to
19 fetal viability.

20 (2) A prohibition on abortion after fetal viabil-
21 ity when, in the good-faith medical judgment of the
22 treating physician, continuation of the pregnancy
23 would pose a risk to the pregnant woman's life or
24 health.

1 (3) A restriction that limits a pregnant wom-
2 an’s ability to obtain an immediate abortion when a
3 health care professional believes, based on her or his
4 good-faith medical judgment, that delay would pose
5 a risk to the woman’s health.

6 (4) A measure or action that prohibits or re-
7 stricts a woman from obtaining an abortion prior to
8 fetal viability based on her reasons or perceived rea-
9 sons or that requires a woman to state her reasons
10 before obtaining an abortion prior to fetal viability.

11 (d) LIMITATION.—The provisions of this Act shall
12 not apply to laws regulating physical access to clinic en-
13 trances, requirements for parental consent or notification
14 before a minor may obtain an abortion, insurance coverage
15 of abortion, or the procedure described in section
16 1531(b)(1) of title 18, United States Code.

17 (e) EFFECTIVE DATE.—This Act shall apply to gov-
18 ernment restrictions on the provision of abortion services,
19 whether statutory or otherwise, whether they are enacted
20 or imposed prior to or after the date of enactment of this
21 Act.

22 **SEC. 5. LIBERAL CONSTRUCTION.**

23 (a) LIBERAL CONSTRUCTION.—In interpreting the
24 provisions of this Act, a court shall liberally construe such
25 provisions to effectuate the purposes of the Act.

1 (b) RULE OF CONSTRUCTION.—Nothing in this Act
2 shall be construed to authorize any government to inter-
3 fere with a woman’s ability to terminate her pregnancy,
4 to diminish or in any way negatively affect a woman’s con-
5 stitutional right to terminate her pregnancy, or to displace
6 any other remedy for violations of the constitutional right
7 to terminate a pregnancy.

8 **SEC. 6. ENFORCEMENT.**

9 (a) ATTORNEY GENERAL.—The Attorney General
10 may commence a civil action for prospective injunctive re-
11 lief on behalf of the United States against any government
12 official that is charged with implementing or enforcing any
13 restriction that is challenged as unlawful under this Act.

14 (b) PRIVATE RIGHT OF ACTION.—

15 (1) IN GENERAL.—Any individual or entity ag-
16 grieved by an alleged violation of this Act may com-
17 mence a civil action for prospective injunctive relief
18 against the government official that is charged with
19 implementing or enforcing the restriction that is
20 challenged as unlawful under this Act.

21 (2) FACILITY OR PROFESSIONAL.—A health
22 care facility or medical professional may commence
23 an action for prospective injunctive relief on behalf
24 of the facility’s or professional’s patients who are or

1 may be adversely affected by an alleged violation of
2 this Act.

3 (c) **EQUITABLE RELIEF.**—In any action under this
4 section, the court may award appropriate equitable relief,
5 including temporary, preliminary, or permanent injunctive
6 relief.

7 (d) **COSTS.**—In any action under this section, the
8 court shall award the costs of litigation, including reason-
9 able attorney and expert witness fees, to any prevailing
10 or substantially prevailing plaintiff.

11 (e) **JURISDICTION.**—The district courts of the United
12 States shall have jurisdiction over proceedings commenced
13 pursuant to this section and shall exercise the same with-
14 out regard to whether the party aggrieved shall have ex-
15 hausted any administrative or other remedies that may be
16 provided for by law.

17 **SEC. 7. PREEMPTION.**

18 No State or subdivision thereof shall enact or enforce
19 any law, rule, regulation, standard, or other provision hav-
20 ing the force and effect of law that conflicts with any pro-
21 vision of this Act.

22 **SEC. 8. SEVERABILITY.**

23 If any provision of this Act, or the application of such
24 provision to any person or circumstance, is held to be un-
25 constitutional, the remainder of this Act, or the applica-

1 tion of such provision to all other persons or cir-
2 cumstances, shall not be affected thereby.

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