

118TH CONGRESS
1ST SESSION

S. 317

To guarantee that Americans have the freedom to make certain reproductive decisions without undue government interference.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Mr. KAINE (for himself, Ms. MURKOWSKI, Ms. SINEMA, and Ms. COLLINS)
introduced the following bill; which was read twice and referred to the
Committee on the Judiciary

A BILL

To guarantee that Americans have the freedom to make certain reproductive decisions without undue government interference.

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 “Reproductive Freedom
5 for All Act”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act to guarantee that Ameri-
8 cans have the freedom to make certain reproductive deci-
9 sions without undue government interference, consistent

1 with the essential holdings of *Griswold v. Connecticut* (381
 2 U.S. 479 (1965)), *Eisenstadt v. Baird* (405 U.S. 438
 3 (1972)), *Roe v. Wade* (410 U.S. 113 (1973)), *Carey v.*
 4 *Population Services International* (431 U.S. 678 (1977)),
 5 *Planned Parenthood of Southeastern Pennsylvania v.*
 6 *Casey* (505 U.S. 833 (1992)), and *Whole Woman’s Health*
 7 *v. Hellerstedt* (579 U.S. 582 (2016)).

8 **SEC. 3. FINDINGS.**

9 Congress finds the following:

10 (1) For decades, the Supreme Court of the
 11 United States has held that the liberty protected by
 12 the Fourteenth Amendment to the Constitution of
 13 the United States encompasses a right to make cer-
 14 tain reproductive decisions without undue govern-
 15 ment interference.

16 (2) While these precedents have advanced
 17 slightly different constitutional rationales, and have
 18 acknowledged that some government regulation is
 19 acceptable, they have created a society whereby
 20 Americans expect to make certain reproductive deci-
 21 sions without undue government interference. Gen-
 22 erations of American women have relied on the fact
 23 that they have the freedom to make such choices as
 24 a matter of fundamental personal right.

1 (3) The right to make certain reproductive deci-
2 sions without undue government interference should
3 be guaranteed for all Americans, consistent with the
4 Fourteenth Amendment’s guarantee of equal protec-
5 tion and due process under the law.

6 (4) The Supreme Court has reversed five dec-
7 ades of jurisprudence in *Dobbs v. Jackson Women’s*
8 Health Organization (142 S. Ct. 2228 (2022)), con-
9 cluding that questions related to the legality of abor-
10 tion services are a matter for legislative action rather
11 than constitutional protection.

12 (5) In light of the *Dobbs* ruling that the legality
13 of abortion services is now a matter of legislative ac-
14 tion, it is appropriate to enact the essential holdings
15 of the cases referred to in section 2 so that Ameri-
16 cans are guaranteed the freedom to make the repro-
17 ductive decisions discussed therein. The absence of
18 such a guarantee has a profound effect upon the
19 quality of Americans’ lives, particularly the lives of
20 women. As such, this action is an appropriate exer-
21 cise of the Congressional power established in sec-
22 tion 5 of the Fourteenth Amendment to the Con-
23 stitution of the United States. By continuing to pro-
24 tect their reliance on fundamental reproductive

1 rights, such a guarantee will improve the general
2 welfare for generations of American women.

3 (6) Enacting this guarantee is also justified as
4 congressional regulation of interstate commerce be-
5 cause contraception and abortion services are eco-
6 nomic transactions that frequently involve the ship-
7 ment of goods, the provision of services, and the
8 travel of persons across State lines.

9 **SEC. 4. REPRODUCTIVE FREEDOM.**

10 (a) IN GENERAL.—All persons shall have the right
11 to make certain reproductive decisions without undue gov-
12 ernment interference, consistent with the provisions of this
13 Act.

14 (b) AUTHORITY.—A State—

15 (1) shall not prohibit an individual from obtain-
16 ing or using contraceptives or contraceptive care;

17 (2) shall not impose an undue burden on the
18 ability of a woman to choose whether or not to ter-
19 minate a pregnancy before fetal viability;

20 (3) may regulate the termination of a preg-
21 nancy after fetal viability, provided that a State
22 shall not prohibit the termination of a pregnancy
23 that, in the appropriate medical judgment of the at-
24 tending health care practitioner or practitioners, is

1 medically indicated to protect the life or health of
2 the pregnant woman; and

3 (4) may enact reasonable regulations to further
4 the health or safety of a woman seeking to terminate
5 a pregnancy, unless such regulations impose an
6 undue burden pursuant to paragraph (2).

7 (c) RULE OF CONSTRUCTION.—Nothing in this Act
8 shall be construed to have any effect on laws regarding
9 conscience protection.

10 **SEC. 5. ENFORCEMENT.**

11 The Attorney General of the United States or any
12 person adversely affected by State laws passed in con-
13 travention of this Act may seek injunctive relief in a Fed-
14 eral district or State court. In any action or proceeding
15 under this section, the court, in its discretion, may allow
16 the prevailing party, other than the United States, a rea-
17 sonable attorney’s fee as part of the costs.

18 **SEC. 6. DEFINITIONS.**

19 (a) IN GENERAL.—In this Act:

20 (1) FETAL VIABILITY.—The term “fetal viabil-
21 ity” means the time at which, in the appropriate
22 medical judgment of the attending health care prac-
23 titioner or practitioners, there is a realistic possi-
24 bility of maintaining and nourishing a life outside
25 the womb.

1 (2) REASONABLE.—The term “reasonable”
 2 with respect to a regulation referred to in paragraph
 3 (4) of section 4(b), means that the regulation is con-
 4 sistent with the essential holdings of the cases re-
 5 ferred to in section 2.

6 (3) STATE.—The term “State” includes the
 7 District of Columbia, the Commonwealth of Puerto
 8 Rico, and each other territory or possession of the
 9 United States, and any subdivision of any of the
 10 foregoing.

11 (b) UNDUE BURDEN.—For purposes of this Act, an
 12 undue burden shall be deemed to exist, and the related
 13 provision of law shall be invalid under section 4, if the
 14 purpose or effect of such law is to place a substantial ob-
 15 stacle in the path of a woman seeking to terminate a preg-
 16 nancy before fetal viability.

17 **SEC. 7. SEVERABILITY.**

18 If any provision of this Act, or the application of such
 19 provision to any person or circumstance is held to be in-
 20 valid, the remainder of this Act and the application of the
 21 provisions of such to any person or circumstance shall not
 22 be affected thereby.

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