To protect a woman’s right and ability 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

Mr. BLOOMBERG (for himself, Ms. BALDWIN, Mr. MARKEY, Mr. WYDEN, Mr. BROWN, Mr. WHITEHOUSE, Ms. HIROKO, Mr. COONS, Ms. WARREN, Mr. SCHUYLER, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. SANDERS, Mr. VAN HOLEN, Mr. CARDIN, Mr. KAYE, Mr. BENNET, Mr. Tester, Mr. DURBIN, Ms. HASSAN, Mrs. McCASKILL, Ms. KLOBUCHAR, Mr. FRANKEN, Ms. DUCKWORTH, Mrs. SHAHEEN, Mrs. MURRAY, Mr. BOOKER, Mr. MERKLEY, Mr. MURPHY, Mr. PETERS, Mr. UDALL, Ms. HARRIS, Mr. HEINRICH, Ms. CANTWELL, Mr. SCHUMER, Ms. CORTEZ MASTO, Mr. KING, Ms. STABENOW, Mr. MENENDEZ, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To protect a woman’s right and ability 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 2017”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Access to safe, legal abortion services is essential to women’s health and central to women’s ability to participate equally in the economic and social life of the United States.

(2) Access to safe, legal abortion services has been hindered in the United States in various ways, including blockades of health care facilities and associated violence; restrictions on insurance coverage; restrictions on minors’ ability to obtain services; and unnecessary health regulations that single out abortion providers and those seeking their services, and which do not confer any health benefit or further the safety of abortion, but harm women by reducing the availability of services.

(3) In the early 1990s, protests and blockades at health care facilities where abortions were performed, and associated violence, increased dramatically and reached crisis level, requiring Congressional action. Congress passed the Freedom of Access to Clinic Entrances Act (Public Law 103–259) to address that situation and ensure that women could physically access abortion services.

(4) Since 2010, there has been an equally dramatic increase in the number of laws and regulations
singling out abortion that threaten women’s health and burden their access to safe abortion services by interfering with health care professionals’ ability to provide such services. The Supreme Court’s decision in Whole Woman’s Health v. Hellerstedt (579 U.S. _____ (2016)), reaffirmed the constitutional right to abortion and struck down two unnecessary health regulations that created undue burdens upon access to abortion. Congressional action is necessary to put an end to these types of harmful restrictions. In addition, there has been a dramatic increase in the passage of laws that blatantly violate the constitutional protections afforded women, such as bans on abortion prior to viability.

(5) Legal abortion is one of the safest medical procedures in the United States, safer than numerous procedures that take place outside of hospitals, as noted by the Supreme Court in Whole Woman’s Health. That safety is furthered by regulations that are based on medical science and are generally applicable to the medical profession or to medically comparable procedures.

(6) Many State and local governments are imposing restrictions on the provision of abortion that are neither evidence-based nor generally applicable
to the medical profession or to medically comparable procedures. Though described by their proponents as health and safety regulations, many of these abortion-specific restrictions do not confer any health benefit. Also, these restrictions interfere with women’s personal and private medical decisions, make access to abortion more difficult and costly, and even make it impossible for some women to obtain those services.

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

(8) The cumulative effect of these numerous restrictions has been to make a woman’s ability to exercise her constitutional rights dependent on the State in which she lives. Federal legislation putting a stop to harmful restrictions throughout the United States is necessary to ensure that women in all
States have meaningful access to safe abortion services, a constitutional right repeatedly affirmed by the United States Supreme Court, most recently in 2016.

(9) Congress has the authority to protect women’s ability to access abortion services pursuant to its powers under the Commerce Clause and its powers under section 5 of the Fourteenth Amendment to the Constitution to enforce the provisions of section 1 of the Fourteenth Amendment.

(b) PURPOSE.—It is the purpose of this Act to protect women’s health by ensuring that abortion services will continue to be available and that abortion providers are not singled out for medically unnecessary restrictions that burden women by preventing them from accessing safe abortion services. It is not the purpose of this Act to address all obstacles in the path of women who seek access to abortion (for example, this Act does not apply to clinic violence, restrictions on insurance or medical assistance coverage of abortion, or requirements for parental consent or notification before a minor may obtain an abortion) which Congress should address through separate legislation as appropriate.

SEC. 3. DEFINITIONS.

In this Act:
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(1) ABORTION.—The term “abortion” means any medical treatment, including the prescription of medication, intended to cause the termination of a pregnancy except for the purpose of increasing the probability of a live birth, to remove an ectopic pregnancy, or to remove a dead fetus.

(2) ABORTION PROVIDER.—The term “abortion provider” means a health care professional who performs abortions.

(3) GOVERNMENT.—The term “government” includes a branch, department, agency, instrumentality, or individual acting under color of law of the United States, a State, or a subdivision of a State.

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

(5) MEDICALLY COMPARABLE PROCEDURES.—The term “medically comparable procedures” means medical procedures that are similar in terms of risk, complexity, duration, or the degree of sterile precaution that is indicated.
(6) PREGNANCY.—The term “pregnancy” refers to the period of the human reproductive process beginning with the implantation of a fertilized egg.

(7) STATE.—The term “State” includes each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States.

(8) VIABILITY.—The term “viability” means the point in a pregnancy at which, in the good-faith medical judgment of the treating health care professional, based on the particular facts of the case before her or him, there is a reasonable likelihood of sustained fetal survival outside the uterus with or without artificial support.

SEC. 4. PROHIBITED MEASURES AND ACTIONS.

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

(1) A requirement that a medical professional perform specific tests or medical procedures in con-
nection with the provision of an abortion, unless
generally required for the provision of medically
comparable procedures.

(2) A requirement that the same clinician who
performs a patient’s abortion also perform specified
tests, services or procedures prior to or subsequent
to the abortion.

(3) A limitation on an abortion provider’s abil-
ity to prescribe or dispense drugs based on current
evidence-based regimens or her or his good-faith
medical judgment, other than a limitation generally
applicable to the medical profession.

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

(5) A requirement or limitation concerning the
physical plant, equipment, staffing, or hospital
transfer arrangements of facilities where abortions
are performed, or the credentials or hospital privi-
leges or status of personnel at such facilities, that is
not imposed on facilities or the personnel of facilities
where medically comparable procedures are per-
formed.
(6) A requirement that, prior to obtaining an abortion, a patient make one or more medically unnecessary in-person visits to the provider of abortion services or to any individual or entity that does not provide abortion services.

(7) A requirement or limitation that prohibits or restricts medical training for abortion procedures, other than a requirement or limitation generally applicable to medical training for medically comparable procedures.

(b) Other Prohibited Measures or Actions.—

(1) In general.—A measure or action that applies to and restricts the provision of abortion services or the facilities that provide abortion services that is similar to any of the prohibited limitations or requirements described in subsection (a) shall be unlawful if such measure or action singles out abortion services or make abortion services more difficult to access and does not significantly advance women’s health or the safety of abortion services.

(2) Prima facie case.—To make a prima facie showing that a measure or action is unlawful under paragraph (1) a plaintiff shall demonstrate that the measure or action involved—
(A) singles out the provision of abortion services or facilities in which abortion services are performed; or

(B) impedes women’s access to abortion services based on one or more of the factors described in paragraph (3).

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

(A) Whether the measure or action interferes with an abortion provider’s ability to provide care and render services in accordance with her or his good-faith medical judgment.

(B) Whether the measure or action is reasonably likely to delay some women in accessing abortion services.

(C) Whether the measure or action is reasonably likely to directly or indirectly increase the cost of providing abortion services or the cost for obtaining abortion services (including costs associated with travel, childcare, or time off work).

(D) Whether the measure or action requires, or is reasonably likely to have the effect
of necessitating, a trip to the offices of the abortion provider that would not otherwise be required.

(E) Whether the measure or action is reasonably likely to result in a decrease in the availability of abortion services in the State.

(F) Whether the measure or action imposes criminal or civil penalties that are not imposed on other health care professionals for comparable conduct or failure to act or that are harsher than penalties imposed on other health care professionals for comparable conduct or failure to act.

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

(4) DEFENSE.—A measure or action shall be unlawful under this subsection upon making a prima facie case (as provided for under paragraph (2)), unless the defendant establishes, by clear and convincing evidence, that—

(A) the measure or action significantly advances the safety of abortion services or the health of women; and
(B) the safety of abortion services or the health of women cannot be advanced by a less restrictive alternative measure or action.

(c) OTHER PROHIBITIONS.—The following restrictions on the performance of abortion are unlawful and shall not be imposed or applied by any government:

(1) A prohibition or ban on abortion prior to fetal viability, including a prohibition, ban, or restriction on a particular abortion procedure, subject to subsection (d).

(2) A prohibition on abortion after fetal viability when, in the good-faith medical judgment of the treating physician, continuation of the pregnancy would pose a risk to the pregnant woman’s life or health.

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

(4) A measure or action that prohibits or restricts a woman from obtaining an abortion prior to fetal viability based on her reasons or perceived reasons or that requires a woman to state her reasons before obtaining an abortion prior to fetal viability.
(d) **LIMITATION.**—The provisions of this Act shall not apply to laws regulating physical access to clinic entrances, requirements for parental consent or notification before a minor may obtain an abortion, insurance or medical assistance coverage of abortion, or the procedure described in section 1531(b)(1) of title 18, United States Code.

(e) **EFFECTIVE DATE.**—This Act shall apply to government restrictions on the provision of abortion services, whether statutory or otherwise, whether they are enacted or imposed prior to or after the date of enactment of this Act.

**SEC. 5. LIBERAL CONSTRUCTION.**

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

(b) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to authorize any government to interfere with a woman’s ability to terminate her pregnancy, to diminish or in any way negatively affect a woman’s constitutional right to terminate her pregnancy, or to displace any other remedy for violations of the constitutional right to terminate a pregnancy.
SEC. 6. ENFORCEMENT.

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

(b) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—Any individual or entity aggrieved by an alleged violation of this Act may commence a civil action for prospective injunctive relief against the government official that is charged with implementing or enforcing the restriction that is challenged as unlawful under this Act.

(2) FACILITY OR PROFESSIONAL.—A health care facility or medical professional may commence an action for prospective injunctive relief on behalf of the facility’s or professional’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 fees, to any prevailing plaintiff. A plaintiff shall
not be liable to a defendant for costs in an action under this section.

(e) JURISDICTION.—The district courts of the United States shall have jurisdiction over proceedings commenced pursuant to this section 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.

SEC. 7. PREEMPTION.

No State or subdivision thereof shall enact 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.

SEC. 8. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, or the application of such provision to all other persons or circumstances, shall not be affected thereby.