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S. 510

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

MARCH 2, 2017

Mr. BLUMENTHAL (for himself, Ms. BALDWIN, Mr. MARKEY, Mr. WYDEN, Mr. BROWN, Mr. WHITEHOUSE, Ms. HIRONO, Mr. COONS, Ms. WARREN, Mr. SCHATZ, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. SANDERS, Mr. VAN HOLLEN, Mr. CARDIN, Mr. KAINE, 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, Mr. LEAHY, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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”.

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 unnecessary health regulations that single out abor-
13 tion providers and those seeking their services, and
14 which do not confer any health benefit or further the
15 safety of abortion, but harm women by reducing the
16 availability 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 burden their access to safe abortion services by
3 interfering with health care professionals’ ability to
4 provide such services. The Supreme Court’s decision
5 in *Whole Woman’s Health v. Hellerstedt* (579 U.S.
6 _____ (2016)), reaffirmed the constitutional right
7 to abortion and struck down two unnecessary health
8 regulations that created undue burdens upon access
9 to abortion. Congressional action is necessary to put
10 an end to these types of harmful restrictions. In ad-
11 dition, there has been a dramatic increase in the
12 passage of laws that blatantly violate the constitu-
13 tional protections afforded women, such as bans on
14 abortion prior to viability.

15 (5) Legal abortion is one of the safest medical
16 procedures in the United States, safer than numer-
17 ous procedures that take place outside of hospitals,
18 as noted by the Supreme Court in *Whole Woman’s*
19 *Health*. That safety is furthered by regulations that
20 are based on medical science and are generally appli-
21 cable to the medical profession or to medically com-
22 parable procedures.

23 (6) Many State and local governments are im-
24 posing restrictions on the provision of abortion that
25 are neither evidence-based nor generally applicable

1 to the medical profession or to medically comparable
2 procedures. Though described by their proponents as
3 health and safety regulations, many of these abor-
4 tion-specific restrictions do not confer any health
5 benefit. Also, these restrictions interfere with wom-
6 en's personal and private medical decisions, make
7 access to abortion more difficult and costly, and
8 even make it impossible for some women to obtain
9 those services.

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

20 (8) The cumulative effect of these numerous re-
21 strictions has been to make a woman's ability to ex-
22 ercise her constitutional rights dependent on the
23 State in which she lives. Federal legislation putting
24 a stop to harmful restrictions throughout the United
25 States is necessary to ensure that women in all

1 States have meaningful access to safe abortion serv-
2 ices, a constitutional right repeatedly affirmed by
3 the United States Supreme Court, most recently in
4 2016.

5 (9) Congress has the authority to protect wom-
6 en's ability to access abortion services pursuant to
7 its powers under the Commerce Clause and its pow-
8 ers under section 5 of the Fourteenth Amendment to
9 the Constitution to enforce the provisions of section
10 1 of the Fourteenth Amendment.

11 (b) PURPOSE.—It is the purpose of this Act to pro-
12 tect women's health by ensuring that abortion services will
13 continue to be available and that abortion providers are
14 not singled out for medically unnecessary restrictions that
15 burden women by preventing them from accessing safe
16 abortion services. It is not the purpose of this Act to ad-
17 dress all obstacles in the path of women who seek access
18 to abortion (for example, this Act does not apply to clinic
19 violence, restrictions on insurance or medical assistance
20 coverage of abortion, or requirements for parental consent
21 or notification before a minor may obtain an abortion)
22 which Congress should address through separate legisla-
23 tion as appropriate.

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

1 (1) ABORTION.—The term “abortion” means
2 any medical treatment, including the prescription of
3 medication, intended to cause the termination of a
4 pregnancy except for the purpose of increasing the
5 probability of a live birth, to remove an ectopic preg-
6 nancy, or to remove a dead fetus.

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

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

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

20 (5) MEDICALLY COMPARABLE PROCEDURES.—
21 The term “medically comparable procedures” means
22 medical procedures that are similar in terms of risk,
23 complexity, duration, or the degree of sterile pre-
24 caution that is indicated.

1 (6) PREGNANCY.—The term “pregnancy” refers
 2 to the period of the human reproductive process be-
 3 ginning with the implantation of a fertilized egg.

4 (7) STATE.—The term “State” includes each of
 5 the 50 States, the District of Columbia, the Com-
 6 monwealth of Puerto Rico, and each territory or pos-
 7 session of the United States.

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

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

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

24 (1) A requirement that a medical professional
 25 perform specific tests or medical procedures in con-

1 nection with the provision of an abortion, unless
2 generally required for the provision of medically
3 comparable procedures.

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

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

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

17 (5) A requirement or limitation concerning the
18 physical plant, equipment, staffing, or hospital
19 transfer arrangements of facilities where abortions
20 are performed, or the credentials or hospital privi-
21 leges or status of personnel at such facilities, that is
22 not imposed on facilities or the personnel of facilities
23 where medically comparable procedures are per-
24 formed.

1 (6) A requirement that, prior to obtaining an
 2 abortion, a patient make one or more medically un-
 3 necessary in-person visits to the provider of abortion
 4 services or to any individual or entity that does not
 5 provide abortion services.

6 (7) A requirement or limitation that prohibits
 7 or restricts medical training for abortion procedures,
 8 other than a requirement or limitation generally ap-
 9 plicable to medical training for medically comparable
 10 procedures.

11 (b) OTHER PROHIBITED MEASURES OR ACTIONS.—

12 (1) IN GENERAL.—A measure or action that
 13 applies to and restricts the provision of abortion
 14 services or the facilities that provide abortion serv-
 15 ices that is similar to any of the prohibited limita-
 16 tions or requirements described in subsection (a)
 17 shall be unlawful if such measure or action singles
 18 out abortion services or make abortion services more
 19 difficult to access and does not significantly advance
 20 women’s health or the safety of abortion services.

21 (2) PRIMA FACIE CASE.—To make a prima
 22 facie showing that a measure or action is unlawful
 23 under paragraph (1) a plaintiff shall demonstrate
 24 that the measure or action involved—

1 (A) singles out the provision of abortion
2 services or facilities in which abortion services
3 are performed; or

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

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

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

15 (B) Whether the measure or action is rea-
16 sonably likely to delay some women in accessing
17 abortion services.

18 (C) Whether the measure or action is rea-
19 sonably likely to directly or indirectly increase
20 the cost of providing abortion services or the
21 cost for obtaining abortion services (including
22 costs associated with travel, childcare, or time
23 off work).

24 (D) Whether the measure or action re-
25 quires, or is reasonably likely to have the effect

1 of necessitating, a trip to the offices of the
2 abortion provider that would not otherwise be
3 required.

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

7 (F) Whether the measure or action im-
8 poses criminal or civil penalties that are not im-
9 posed on other health care professionals for
10 comparable conduct or failure to act or that are
11 harsher than penalties imposed on other health
12 care professionals for comparable conduct or
13 failure to act.

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

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

22 (A) the measure or action significantly ad-
23 vances the safety of abortion services or the
24 health of women; and

1 (B) the safety of abortion services or the
2 health of women cannot be advanced by a less
3 restrictive alternative measure or action.

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

7 (1) A prohibition or ban on abortion prior to
8 fetal viability, including a prohibition, ban, or re-
9 striction on a particular abortion procedure, subject
10 to subsection (d).

11 (2) A prohibition on abortion after fetal viabil-
12 ity when, in the good-faith medical judgment of the
13 treating physician, continuation of the pregnancy
14 would pose a risk to the pregnant woman's life or
15 health.

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

21 (4) A measure or action that prohibits or re-
22 stricts a woman from obtaining an abortion prior to
23 fetal viability based on her reasons or perceived rea-
24 sons or that requires a woman to state her reasons
25 before obtaining an abortion prior to fetal viability.

1 (d) LIMITATION.—The provisions of this Act shall
2 not apply to laws regulating physical access to clinic en-
3 trances, requirements for parental consent or notification
4 before a minor may obtain an abortion, insurance or med-
5 ical assistance coverage of abortion, or the procedure de-
6 scribed in section 1531(b)(1) of title 18, United States
7 Code.

8 (e) EFFECTIVE DATE.—This Act shall apply to gov-
9 ernment restrictions on the provision of abortion services,
10 whether statutory or otherwise, whether they are enacted
11 or imposed prior to or after the date of enactment of this
12 Act.

13 **SEC. 5. LIBERAL CONSTRUCTION.**

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

17 (b) RULE OF CONSTRUCTION.—Nothing in this Act
18 shall be construed to authorize any government to inter-
19 fere with a woman’s ability to terminate her pregnancy,
20 to diminish or in any way negatively affect a woman’s con-
21 stitutional right to terminate her pregnancy, or to displace
22 any other remedy for violations of the constitutional right
23 to terminate a pregnancy.

1 **SEC. 6. ENFORCEMENT.**

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

7 (b) PRIVATE RIGHT OF ACTION.—

8 (1) IN GENERAL.—Any individual or entity ag-
9 grieved by an alleged violation of this Act may com-
10 mence a civil action for prospective injunctive relief
11 against the government official that is charged with
12 implementing or enforcing the restriction that is
13 challenged as unlawful under this Act.

14 (2) FACILITY OR PROFESSIONAL.—A health
15 care facility or medical professional may commence
16 an action for prospective injunctive relief on behalf
17 of the facility’s or professional’s patients who are or
18 may be adversely affected by an alleged violation of
19 this Act.

20 (c) EQUITABLE RELIEF.—In any action under this
21 section, the court may award appropriate equitable relief,
22 including temporary, preliminary, or permanent injunctive
23 relief.

24 (d) COSTS.—In any action under this section, the
25 court shall award costs of litigation, as well as reasonable
26 attorney fees, to any prevailing plaintiff. A plaintiff shall

1 not be liable to a defendant for costs in an action under
2 this section.

3 (e) JURISDICTION.—The district courts of the United
4 States shall have jurisdiction over proceedings commenced
5 pursuant to this section and shall exercise the same with-
6 out regard to whether the party aggrieved shall have ex-
7 hausted any administrative or other remedies that may be
8 provided for by law.

9 **SEC. 7. PREEMPTION.**

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

14 **SEC. 8. SEVERABILITY.**

15 If any provision of this Act, or the application of such
16 provision to any person or circumstance, is held to be un-
17 constitutional, the remainder of this Act, or the applica-
18 tion of such provision to all other persons or cir-
19 cumstances, shall not be affected thereby.

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