To protect a person’s ability to determine whether to continue or end a pregnancy, and to protect a health care provider’s ability to provide abortion services.

IN THE SENATE OF THE UNITED STATES

Ms. Baldwin (for herself, Mr. Blumenthal, Mrs. Murray, Mr. Schumer, Ms. Warren, Ms. Cortez Masto, Ms. Klobuchar, Ms. Stabenow, Mrs. Gillibrand, Mr. Murphy, Mr. Bennet, Mr. Booker, Mr. Brown, Ms. Cantwell, Mr. Cardin, Mr. Carper, Mr. Coons, Ms. Duckworth, Mr. Durbin, Mrs. Feinstein, Mr. Fetterman, Ms. Hassan, Mr. Heinrich, Mr. Hickenlooper, Ms. Hirono, Mr. Kaine, Mr. Kelly, Mr. King, Mr. Luján, Mr. Markey, Mr. Menendez, Mr. Merkley, Mr. Ossoff, Mr. Padilla, Mr. Peters, Mr. Reed, Ms. Rosen, Mr. Sanders, Mr. Schatz, Mrs. Shaheen, Ms. Sinema, Ms. Smith, Mr. Tester, Mr. Van Hollen, Mr. Warner, Mr. Warnock, Mr. Welch, Mr. Whitehouse, and Mr. Wyden) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To protect a person’s ability to determine whether to continue or end a pregnancy, and to protect a health care provider’s ability to provide abortion services.

1 Be it enacted by the Senate and House of Representa-
SECTION 1. SHORT TITLE.

This Act may be cited as the “Women’s Health Protection Act of 2023”.

SEC. 2. PURPOSE.

The purposes of this Act are as follows:

(1) To permit people to seek and obtain abortion services, and to permit health care providers to provide abortion services, without harmful or unwarranted limitations or requirements that single out the provision of abortion services for restrictions that are more burdensome than those restrictions imposed on medically comparable procedures, do not significantly advance reproductive health or the safety of abortion services, or make abortion services more difficult to access.

(2) To promote access to abortion services and thereby protect women’s ability to participate equally in the economic and social life of the United States.

(3) To protect people’s ability to make decisions about their bodies, medical care, family, and life’s course.

(4) To eliminate unwarranted burdens on commerce and the right to travel. Abortion bans and restrictions invariably affect commerce over which the United States has jurisdiction. Health care providers engage in economic and commercial activity when
they provide abortion services. Moreover, there is an
interstate market for abortion services and, in order
to provide such services, health care providers en-
gege in interstate commerce to purchase medicine,
medical equipment, and other necessary goods and
services; to obtain and provide training; and to em-
ploy and obtain commercial services from health care
personnel, many of whom themselves engage in
interstate commerce, including by traveling across
State lines. Congress has the authority to enact this
Act to protect access to abortion services pursuant
to—

(A) its powers under the commerce clause
of section 8 of article I of the Constitution of
the United States;

(B) its powers under section 5 of the Four-
teenth Amendment to the Constitution of the
United States to enforce the provisions of sec-
tion 1 of the Fourteenth Amendment; and

(C) its powers under the necessary and
proper clause of section 8 of Article I of the
Constitution of the United States.

SEC. 3. DEFINITIONS.

In this Act:
(1) ABORTION SERVICES.—The term “abortion services” means an abortion and any medical or non-medical services related to and provided in conjunction with an abortion (whether or not provided at the same time or on the same day as the abortion).

(2) GOVERNMENT.—The term “government” includes each branch, department, agency, instrumentality, and official of the United States or a State.

(3) HEALTH CARE PROVIDER.—The term “health care provider” means any entity (including any hospital, clinic, or pharmacy) or individual (including any physician, certified nurse-midwife, nurse practitioner, pharmacist, or physician assistant) that—

(A) is engaged or seeks to engage in the delivery of health care services, including abortion services; and

(B) if required by law or regulation to be licensed or certified to engage in the delivery of such services—

(i) is so licensed or certified; or

(ii) would be so licensed or certified but for their past, present, or potential
provision of abortion services protected by section 4.

(4) MEDICALLY COMPARABLE PROCEDURES.—
The term “medically comparable procedures” means medical procedures that are similar in terms of health and safety risks to the patient, complexity, or the clinical setting that is indicated.

(5) PREGNANCY.—The term “pregnancy” refers to the period of the human reproductive process beginning with the implantation of a fertilized egg.

(6) STATE.—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States, and any subdivision of any of the foregoing, including any unit of local government, such as a county, city, town, village, or other general purpose political subdivision of a State.

(7) VIABILITY.—The term “viability” means the point in a pregnancy at which, in the good-faith medical judgment of the treating health care provider, and based on the particular facts of the case before the health care provider, there is a reasonable likelihood of sustained fetal survival outside the uterus with or without artificial support.
SEC. 4. PROTECTED ACTIVITIES AND SERVICES.

(a) General Rules.—

(1) Pre-viability.—A health care provider has a right under this Act to provide abortion services, and a patient has a corresponding right under this Act to terminate a pregnancy prior to viability without being subject to any of the following limitations or requirements:

(A) A prohibition on abortion prior to viability, including a prohibition or restriction on a particular abortion procedure or method, or a prohibition on providing or obtaining such abortions.

(B) A limitation on a health care provider’s ability to prescribe or dispense drugs that could be used for reproductive health purposes based on current evidence-based regimens or the provider’s good-faith medical judgment, or a limitation on a patient’s ability to receive or use such drugs, other than a limitation generally applicable to the prescription, dispensing, or distribution of drugs.

(C) A limitation on a health care provider’s ability to provide, or a patient’s ability to receive, abortion services via telemedicine, other than a limitation generally applicable to the
provision of medically comparable services via telemedicine.

(D) A limitation or prohibition on a patient’s ability to receive, or a provider’s ability to provide, abortion services in a State based on the State of residency of the patient, or a prohibition or limitation on the ability of any individual to assist or support a patient seeking abortion.

(E) A requirement that a health care provider perform specific tests or medical procedures in connection with the provision of abortion services (including prior to or subsequent to the abortion), unless generally required for the provision of medically comparable procedures.

(F) A requirement that a health care provider offer or provide a patient seeking abortion services medically inaccurate information.

(G) A limitation or requirement concerning the physical plant, equipment, staffing, or hospital transfer arrangements of facilities where abortion services are provided, or the credentials or hospital privileges or status of personnel at such facilities, that is not imposed on facili-
ties or the personnel of facilities where medically comparable procedures are performed.

(H) 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.

(I) A limitation on a health care provider’s ability to provide immediate abortion services when that health care provider believes, based on the good-faith medical judgment of the provider, that delay would pose a risk to the patient’s life or health.

(J) A requirement that a patient seeking abortion services at any point or points in time prior to viability disclose the patient’s reason or reasons for seeking abortion services, or a limitation on providing or obtaining abortion services at any point or points in time prior to viability based on any actual, perceived, or potential reason or reasons of the patient for obtaining abortion services, regardless of whether the limitation is based on a health care provider’s actual or constructive knowledge of such reason or reasons.
(2) Post-viability.—

(A) In general.—A health care provider has a right under this Act to provide abortion services and a patient has a corresponding right under this Act to terminate a pregnancy after viability when, in the good-faith medical judgement of the treating health care provider, it is necessary to protect the life or health of the patient. This subparagraph shall not otherwise apply after viability.

(B) Additional circumstances.—A State may provide additional circumstances under which post viability abortions are permitted under this paragraph.

(C) Limitation.—In the case where a termination of a pregnancy after viability, in the good-faith medical judgement of the treating health care provider, is necessary to protect the life or health of the patient, a State shall not impose any of the limitations or requirements described in paragraph (1)

(b) Other limitations or requirements.—The rights described in subsection (a) shall not be limited or otherwise infringed through any other limitation or requirement that—
(1) expressly, effectively, implicitly, or as implemented, singles out abortion, the provision of abortion services, individuals who seek abortion services or who provide assistance and support to those seeking abortion services, health care providers who provide abortion services, or facilities in which abortion services are provided; and

(2) impedes access to abortion services.

(e) FACTORS FOR CONSIDERATION.—A court may consider the following factors, among others, in determining whether a limitation or requirement impedes access to abortion services for purposes of subsection (b)(2):

(1) Whether the limitation or requirement, in a provider’s good-faith medical judgment, interferes with a health care provider’s ability to provide care and render services, or poses a risk to the patient’s health or safety.

(2) Whether the limitation or requirement is reasonably likely to delay or deter a patient in accessing abortion services.

(3) Whether the limitation or requirement is reasonably likely to directly or indirectly increase the cost of providing abortion services or the cost for obtaining abortion services such as costs associated with travel, childcare, or time off work.
(4) Whether the limitation or requirement is reasonably likely to have the effect of necessitating patient travel that would not otherwise have been required, including by making it necessary for a patient to travel out of State to obtain services.

(5) Whether the limitation or requirement is reasonably likely to result in a decrease in the availability of abortion services in a given State or geographic region.

(6) Whether the limitation or requirement imposes penalties that are not imposed on other health care providers for comparable conduct or failure to act, or that are more severe than penalties imposed on other health care providers for comparable conduct or failure to act.

(7) The cumulative impact of the limitation or requirement combined with other limitations or requirements.

(d) EXCEPTION.—To defend against a claim that a limitation or requirement violates a health care provider’s or patient’s rights under subsection (b) a party must establish, by clear and convincing evidence, that the limitation or requirement is essential to significantly advance the safety of abortion services or the health of the patients and that the safety or health objective cannot be accom-
plished by a different means that does not interfere with
the right protected under subsection (b)).

SEC. 5. PROTECTION OF THE RIGHT TO TRAVEL.

A person has a fundamental right under the Con-
stitution of the United States and this Act to travel to
a State other than the person’s State of residence, includ-
ing to obtain reproductive health services such as prenatal,
childbirth, fertility, and abortion services, and a person
has a right under this Act to assist another person to ob-
tain such services or otherwise exercise the right described
in this section.

SEC. 6. APPLICABILITY AND PREEMPTION.

(a) In General.—

(1) Superseding inconsistent laws.—Except as provided under subsection (b), this Act shall
supersede any inconsistent Federal or State law, and
the implementation of such law, whether statutory,
common law, or otherwise, and whether adopted
prior to or after the date of enactment of this Act.
A Federal or State government official shall not ad-
minister, implement, or enforce any law, rule, regu-
lation, standard, or other provision having the force
and effect of law that conflicts with any provision of
this Act, notwithstanding any other provision of

(2) LAWS AFTER DATE OF ENACTMENT.—Federal law enacted after the date of the enactment of this Act shall be subject to this Act unless such law explicitly excludes such application by reference to this Act.

(b) LIMITATIONS.—The provisions of this Act shall not supersede or apply to—

(1) laws regulating physical access to clinic entrances;

(2) laws regulating insurance or medical assistance coverage of abortion services;

(3) the procedure described in section 1531(b)(1) of title 18, United States Code; or

(4) generally applicable State contract law.

(c) PREEMPTION DEFENSE.—In any legal or administrative action against a person or entity who has exercised or attempted to exercise a right protected by section 4 or section 5 or against any person or entity who has taken any step to assist any such person or entity in exercising such right, this Act shall also apply to, and may be raised as a defense by, such person or entity, in addition to the remedies specified in section 8.
SEC. 7. RULES OF CONSTRUCTION.

(a) Liberal Construction by Courts.—In any action before a court under this Act, the court shall liberally construe the provisions of this Act to effectuate the purposes of the Act.

(b) Protection of Life and Health.—Nothing in this Act shall be construed to authorize any government official to interfere with, diminish, or negatively affect a person’s ability to obtain or provide abortion services prior to viability or after viability when, in the good-faith medical judgment of the treating health care provider, continuation of the pregnancy would pose a risk to the pregnant patient’s life or health.

(c) Government Officials.—Any person who, by operation of a provision of Federal or State law, is permitted to implement or enforce a limitation or requirement that violates section 4 or 5 shall be considered a government official for purposes of this Act.

SEC. 8. ENFORCEMENT.

(a) Attorney General.—The Attorney General may commence a civil action on behalf of the United States in any district court of the United States against any State that violates, or against any government official (including a person described in section 7(e)) who implements or enforces a limitation or requirement that violates, section 4 or 5. The court shall declare unlawful the
limitation or requirement if it is determined to be in viola-
tion of this Act.

(b) Private Right of Action.—

(1) IN GENERAL.—Any individual or entity ad-
versely affected by an alleged violation of this Act,
including any person or health care provider, may
commence a civil action against any government offi-
cial (including a person described in section 7(c))
that implements or enforces a limitation or require-
ment that violates, section 4 or 5. The court shall
declare unlawful the limitation or requirement if it
is in violation of this Act.

(2) HEALTH CARE PROVIDER.—A health care
provider may commence an action for relief on its
own behalf, on behalf of the provider’s staff, and on
behalf of the provider’s patients who are or may be
adversely affected by an alleged violation of this Act.

(c) PRE-ENFORCEMENT CHALLENGES.—A suit under
subsection (a) or (b) may be brought to prevent enforce-
ment or implementation by any government of a State lim-
itation or requirement that is inconsistent with section 4
or 5.

(d) DECLARATORY AND EQUITABLE RELIEF.—In
any action under this section, the court may award appro-
appropriate declaratory and equitable relief, including temporary, preliminary, or permanent injunctive relief.

(e) Costs.—In any action under this section, the court shall award costs of litigation, as well as reasonable attorney’s fees, to any prevailing plaintiff. A plaintiff shall not be liable to a defendant for costs or attorney’s fees in any non-frivolous action under this section.

(f) Jurisdiction.—The district courts of the United States shall have jurisdiction over proceedings under this Act 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.

(g) Abrogation of State Immunity.—Neither a State that enforces or maintains, nor a government official (including a person described in section 7(c)) who is permitted to implement or enforce any limitation or requirement that violates section 4 or 5 shall be immune under the Tenth Amendment to the Constitution of the United States, the Eleventh Amendment to the Constitution of the United States, or any other source of law, from an action in a Federal or State court of competent jurisdiction challenging that limitation or requirement, unless such immunity is required by clearly established Federal law, as determined by the Supreme Court of the United States.
SEC. 9. EFFECTIVE DATE.

This Act shall take effect upon the date of enactment of this Act.

SEC. 10. SEVERABILITY.

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