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. MUKULSKI, 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”.
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 requirements and restrictions that single out abortion providers and those seeking their services, and which do not further women’s health or 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 their ability to access safe abortion services by interfering with health care professionals’ ability to provide such services. Congressional action is now necessary to put an end to these 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 abortions prior to viability.

(5) Legal abortion is one of the safest medical procedures in the United States. That safety is furthered by regulations that are based on 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 science-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 advance the safety of abortion services and do nothing to protect women’s health. 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, and women living in rural and other medically underserved areas.

(8) The cumulative effect of these numerous restrictions has been widely varying access to abortion services such that a woman’s ability to exercise her constitutional rights is 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 access to safe abortion services, an essential constitutional right repeatedly affirmed by the United States Supreme Court.

(9) Congress has the authority to protect women’s ability to access abortion services pursuant to its powers under the Commerce Clause and its pow-
ers 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 pro-
tect women’s health by ensuring that abortion services will
continue to be available and that abortion providers are
not singled out for medically unwarranted restrictions that
harm women by preventing them from accessing safe abor-
tion services. It is not the purpose of this Act to address
all threats to access to abortion (for example, this Act does
not apply to clinic violence, restrictions on insurance cov-
erage 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:

(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 preg-
nancy, 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) 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 each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States.

(7) 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 follow specific medical procedures in connection with the provision of an abortion, unless generally required for the provision of medically comparable procedures.

(2) A limitation on an abortion provider’s ability to delegate tasks, other than a limitation generally applicable to providers of medically comparable procedures.

(3) A limitation on an abortion provider’s ability to prescribe or dispense drugs based on 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 ability 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 privileges or status of personnel at such facilities, that is not imposed on facilities or the personnel of facilities where medically comparable procedures are performed.

(6) A requirement that, prior to obtaining an abortion, a woman make one or more medically unnecessary 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 restricts the provision of abortion services or the facili-
ties that provide abortion services that is similar to 
any of the prohibited limitations or requirements de-
scribed in subsection (a) shall be unlawful if such 
measure or action singles out abortion services or 
make abortions 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 
faci 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 de-
scribed 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 inter-
feres with an abortion provider’s ability to pro-
vide 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.

(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 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 the costs of litigation, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing plaintiff.

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