

118TH CONGRESS
1ST SESSION

S. 2053

To protect freedom of travel and reproductive rights.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2023

Ms. CORTEZ MASTO (for herself, Mr. WHITEHOUSE, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. DURBIN, Mr. MERKLEY, Mr. MURPHY, Mr. MARKEY, Ms. STABENOW, Mr. COONS, Mr. SANDERS, Mr. PADILLA, Mr. WYDEN, Mrs. FEINSTEIN, Mr. BLUMENTHAL, Mr. CARDIN, Ms. CANTWELL, Mr. MENENDEZ, Mr. VAN HOLLEN, Mr. BENNET, Ms. SMITH, Mr. CARPER, Mrs. SHAHEEN, Ms. BALDWIN, Mr. WARNER, Mr. WARNOCK, Ms. HIRONO, Mr. KAINE, Ms. DUCKWORTH, Mr. BROWN, Mr. HICKENLOOPER, Ms. WARREN, Mr. WELCH, Ms. KLOBUCHAR, Mr. FETTERMAN, Ms. ROSEN, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect freedom of travel and reproductive rights.

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 “Freedom to Travel
5 for Health Care Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The right to travel freely and voluntarily
2 among the several States is one of the chief privi-
3 leges and immunities guaranteed to all citizens of
4 the United States by the 14th Amendment and one
5 of the fundamental rights guaranteed to all persons
6 under the 14th Amendment’s Equal Protection
7 Clause.

8 (2) Section 5 of the 14th Amendment empowers
9 Congress to enforce, by appropriate legislation, its
10 provisions.

11 (3) Article 1, section 8, clause 3 of the Con-
12 stitution of the United States empowers Congress to
13 regulate commerce among the several States.

14 (4) The Supreme Court has repeatedly held
15 that “a citizen of one State who travels in other
16 States, intending to return home at the end of his
17 journey, is entitled to enjoy the ‘Privileges and Im-
18 munities of Citizens in the several States’ that he
19 visits” (Saenz v. Roe, 526 U.S. 489, 501 (1999)
20 (citing Corfield v. Coryell, 6 F. Cas. 546 (No. 3,230)
21 (C.C.E.D.Pa.1823); Edwards v. California, 314 U.S.
22 160 (1941); United States v. Guest, 383 U.S. 745
23 (1966))).

24 (5) The Supreme Court long ago decided that
25 one of the privileges which the Constitution guaran-

1 tees to citizens of 1 State is the “fundamental” right
2 to travel to another State to seek and obtain services
3 lawful in that State, including medical services, on
4 terms of substantial equality with the citizens of
5 that State (*Toomer v. Witsell*, 334 U.S. 385, 396
6 (1948); *Hicklin v. Orbeck*, 437 U.S. 518, 525
7 (1978); *Doe v. Bolton*, 410 U.S. 179, 200 (1973)
8 (citing *Ward v. Maryland*, 79 U.S. 418 (1870));
9 *Chalker v. Birmingham & N.W.Ry. Co.*, 249 U.S.
10 522, 527 (1919); *Shaffer v. Carter*, 252 U.S. 37,
11 52, 53 (1920)).

12 (6) Since the 2022 Supreme Court decision in
13 *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct.
14 2228 (2022), State legislatures have proposed and
15 enacted legislation attempting to interfere with the
16 ability to travel for reproductive health care.

17 **SEC. 3. FREEDOM OF TRAVEL.**

18 (a) PROHIBITED CONDUCT.—It shall be unlawful for
19 any person or government to—

20 (1) restrict or in any way sanction, hold liable,
21 discriminate against, or otherwise disadvantage any
22 individual from traveling to another State to receive
23 or provide reproductive health care that is legal in
24 that State;

1 (2) restrict or in any way sanction, hold liable,
2 discriminate against, or otherwise disadvantage any
3 individual, entity, or organization from assisting an
4 individual in traveling to another State to receive or
5 provide reproductive health care that is legal in that
6 State;

7 (3) deny any right, benefit, or privilege to an
8 individual, entity, or organization as retaliation for
9 another person's travel to another State to receive or
10 provide reproductive health care that is legal in that
11 State; or

12 (4) restrict or in any way sanction, hold liable,
13 discriminate against, or otherwise disadvantage a re-
14 productive health care provider for providing, initi-
15 ating, or otherwise enabling reproductive health care
16 services for an individual who does not reside in the
17 State wherein the provider offers health care services
18 if it would be legal for the health care provider to
19 provide, initiate, or otherwise enable the same repro-
20 ductive health care services to an individual who re-
21 sides in the State where the provider offers health
22 care services.

23 (b) PREEMPTION.—A State law that is inconsistent
24 with this section shall be preempted and shall have no
25 legal effect. No State, State official, or any other person

1 acting under the color of law may enforce or apply any
2 law that is inconsistent with this section.

3 (c) ENFORCEMENT.—

4 (1) ATTORNEY GENERAL.—The Attorney Gen-
5 eral may commence a civil action in United States
6 district court on behalf of the United States against
7 any State, State official, or any other person acting
8 under the color of law in violation of this section.
9 The court shall hold unlawful and set aside the limi-
10 tation or requirement if it is in violation of this sec-
11 tion.

12 (2) PRIVATE RIGHT OF ACTION.—Any indi-
13 vidual or entity adversely affected by an alleged vio-
14 lation of this section may commence a civil action in
15 State or Federal court against any State, State offi-
16 cial, or any other person acting under the color of
17 law in violation of this section. The court shall hold
18 unlawful and set aside the limitation or requirement
19 if it is in violation of this section.

20 (3) REPRODUCTIVE HEALTH CARE PRO-
21 VIDER.—A reproductive health care provider may
22 commence an action for relief on its own behalf, on
23 behalf of the provider's staff, or on behalf of the
24 provider's patients who are or may be adversely af-
25 fected by an alleged violation of this section.

1 (4) REMEDIES.—In any action under this sec-
2 tion, the court may award appropriate relief, includ-
3 ing damages, declaratory relief, and temporary, pre-
4 liminary, or permanent injunctive relief.

5 (5) COSTS.—In any action under this section,
6 the court shall award costs of litigation, as well as
7 reasonable attorney’s fees, to any prevailing plain-
8 tiff. A plaintiff shall not be liable to a defendant for
9 costs or attorney’s fees in any non-frivolous action
10 under this section.

11 (6) JURISDICTION.—The district courts of the
12 United States shall have jurisdiction over pro-
13 ceedings under this section and shall exercise the
14 same without regard to whether the party aggrieved
15 shall have exhausted any administrative or other
16 remedies that may be provided for by law.

17 (7) ABROGATION OF STATE IMMUNITY.—Nei-
18 ther a State that enforces or maintains, nor a gov-
19 ernment official who implements or enforces, any
20 limitation or requirement that violates this section
21 shall be immune under the Tenth Amendment to the
22 Constitution of the United States, the Eleventh
23 Amendment to the Constitution of the United
24 States, the doctrine of sovereign immunity, the doc-
25 trine of qualified immunity, or any other source of

1 law, from an action in a Federal or State court of
2 competent jurisdiction challenging that limitation or
3 requirement.

4 (8) RIGHT TO REMOVE.—A defendant shall
5 have a right to remove to Federal court any civil or
6 criminal proceeding that would have the purpose or
7 effect of interfering with or imposing any liability for
8 the exercise of the travel right in this section, with
9 venue in the district court of the United States for
10 the district and division embracing the place wherein
11 such proceeding is pending. An order remanding the
12 case to State court may be immediately reviewable
13 on appeal or otherwise.

14 (d) DEFINITIONS.—In this Act:

15 (1) GOVERNMENT.—The term “government”
16 includes each branch, department, agency, instru-
17 mentality, and official of the United States or of a
18 State.

19 (2) REPRODUCTIVE HEALTH CARE.—The term
20 “reproductive health care” means medical, surgical,
21 counseling, or referral services and care related to
22 pregnancy, including the prevention or termination
23 of a pregnancy, and other reproductive care.

24 (3) STATE.—The term “State” includes the
25 District of Columbia, Puerto Rico, each territory

1 and possession of the United States, and any sub-
2 division of a State, including any unit of local gov-
3 ernment, such as a county, city, town, village, or
4 other general purpose political subdivision of a
5 State.

6 **SEC. 4. SEVERABILITY.**

7 If any provision of this Act, or the application of such
8 provision to any person, entity, government, or cir-
9 cumstance, is held to be unconstitutional, the remainder
10 of this Act, or the application of such provision to all other
11 persons, entities, governments, or circumstances, shall not
12 be affected thereby.

○