

Sex Selection Abortion Bans Are Harmful to Women

The Prenatal Nondiscrimination Act (PRENDA), H.R. 3541, would impose a ban on “sex selection” abortions, imposing an unconstitutional burden on a fundamental right. The National Women’s Law Center strongly opposes such abortion bans as they are an attempt to restrict women’s access to the reproductive health care they need.

Banning “Sex-Selection” Abortions Does Not In Any Way Address the Root Causes of Sex Discrimination

The social and economic factors that could cause a woman to terminate a pregnancy based on the sex of the fetus are troubling, even though there is not much evidence of “sex selection” abortions in the United States.ⁱ But, if sex selection abortions were occurring, a ban would do nothing to address the root of the problem, which is family preference for a son. Where son preference exists, it stems from “the elevated social status of men, the ability of sons to carry on the family name and perform certain cultural rituals, men’s ability to contribute more to family income, and traditions that require sons to care for aging parents.”ⁱⁱⁱ Thus, the problem is gender inequality, and the solution should be remedying that problem, not banning abortions.

Abortion bans have been ineffective in other countries in improving sex ratios, while interventions that address the societal and economic factors giving rise to son preference have shown success.ⁱⁱⁱ The better solution is both international and domestic policies that advance women’s economic freedom and educate girls so that they are perceived to be contributors to their societies rather than burdens.

PRENDA Would Require Providers to Racially or Ethnically Profile Patients

PRENDA’s sex selection ban is targeted at certain “segments of the United States population, primarily those segments tracing their ethnic and cultural origins to countries where sex-selection abortion is evident.” The legislation demands that doctors, at risk of criminal penalties, subject their patients to racial profiling, which is defined as basing a suspicion of criminal behavior on an individual’s race, ethnicity, religion or national origin.^{iv} PRENDA requires providers of abortion care to subject women to additional scrutiny based on nothing more than stereotypes about racial and ethnic preferences for sons, which is a violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution.^v

Abortion Bans Undermine the Trusted Relationship between a Provider and a Patient, Endangering Women’s Lives

Such bans on abortions undermine the patient-provider relationship, and fail to recognize that those who provide abortion care are acutely sensitive to the needs and life circumstances of their patients. Following the ethical standards that apply to all health care providers, medical professionals providing abortion care communicate with their patients to ensure that the decision to terminate a pregnancy is “voluntary and informed.”^{vi} Doctors, nurses and counselors are in the best position to identify and assist a patient when it appears that she is being subjected to outside pressure or she is otherwise unsure about her decision. Providers are well aware of the prevalence of domestic violence

and have screening tools to discern when a woman is being inappropriately pressured into terminating her pregnancy. Legislation banning abortion based on the reason for it does nothing to advance women's dignity, safety or agency, and is in fact a direct affront to it. Women who do not get the safe abortions they seek will be left in the most dire of circumstances, and may seek unsafe abortion, or attempt to self-abort.

ⁱ There is some limited evidence of skewed sex ratios in the United States, though there is no evidence that the ratio is the result of abortion. Douglas Almond & Lena Edlund, *Son Biased Sex Ratios in the 2000 United States Census*, Proceedings of the National Academy of Sciences of the United States of America, vol. 105, no. 15 (Apr. 2008). The ratio could be the result of advanced reproductive technologies such as embryo transfer or sperm sorting. See World Health Organization, *Gender and Genetics, Sex Selection and Discrimination*,

<http://www.who.int/genomics/gender/en/index4.html>, accessed on Feb. 23, 2012. Moreover, there is also limited qualitative evidence indicating that women descended from certain South-East Asian countries have sought out abortion for sex selection purposes. Sunita Puri et al, *"There is such a thing as too many daughters, but not too many sons": A qualitative study of son preference and fetal Sex Selection Among Indian Immigrants in the United States*, 72 Soc. Sci. & Med 1169 (Apr. 2011).

ⁱⁱ Generations Ahead, *Taking a Stand: Tools for Action on Sex Selection* (2009) available at http://www.generations-ahead.org/files-for-download/articles/Sex_Selection_TakingAStand.pdf.

ⁱⁱⁱ Banyan, *The Economist*, *The Daughter's Return: A Glimmer of Hope in the Sad Tale of Sex-Selective Abortion in India* (Dec. 31, 2011), available at <http://www.economist.com/node/21542208> (noting that "a combination of female education, the spread of modern social attitudes through television, government policies and a dawning sense that daughters are more likely than sons to look after parents in old age are all having a cumulative effect" in reducing the practice.).

^{iv} ACLU, *Racial Profiling: Definition*, available at <http://www.aclu.org/racial-justice/racial-profiling-definition> (Nov. 23, 2005).

^v See *Whren v. United States*, 517 U.S. 806, 813 (1996) (noting that "the Constitution prohibits selective enforcement of the law based on considerations such as race.")

^{vi} National Abortion Federation, *Clinical Policy Guidelines, Informed Consent*, 3, available at www.prochoice.org/pubs_research/publications/downloads/professional_education/2011%20CPGs.pdf.