

Race and Sex Selection Abortion Bans Are Harmful to Women

The Prenatal Nondiscrimination Act (PRENDA), H.R. 3541, would impose a ban on “race and sex selective” 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.

PRENDA Would Require Providers to Racially Profile Patients

As Sec. 2(F) of the legislation states, 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.” Furthermore, as made clear at the subcommittee hearing on PRENDA,¹ the race selection ban is premised on the implicit belief that Black women terminate their pregnancies for reasons uniquely related to their race. 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.² PRENDA requires providers of abortion care to subject women to additional scrutiny based on their race or ethnicity, which is a violation of the equal protection clause of the 14th Amendment of the Constitution.

Race-Selection Bans are Based on the False Premise that Black Women’s Abortion Decisions are Racially-Motivated

PRENDA defines a “race-selection abortion” as “an abortion performed for the purposes of eliminating an unborn child because the child or a parent of the child is of an undesired race.” PRENDA authors presume that the disproportionate number of abortions among Black women is the result of something other than **higher rates of unintended pregnancy**.³ Instead, the bill presumes that women choose to terminate pregnancies based on the race of the fetus, the race of the men that impregnated them, or a woman’s own perception that her race is “undesired.”

Proponents of PRENDA and similar state bills allege that these bills would address the high abortion rate among Black women by banning such alleged “race selective” abortions. However, the only cases of “race selection” they actually cite **did not involve Black women at all**. Legislators supporting a similar bill in Georgia presented only a few reported instances of white parents or grandparents who have either forced or attempted to force their daughters to terminate pregnancies based on the race of the men who impregnated them. In such cases existing laws, including battery and kidnapping, can be invoked to properly punish those motivated by racism to force or coerce a woman into having an abortion.

PRENDA Does Nothing to Improve Health Care Access or Other Conditions for Women of Color

Under the guise of “remedying” discrimination, Congressional members supporting PRENDA instead seek to restrict access to full reproductive health care for women of color. Proponents of PRENDA suggest that “easy” access to abortion clinics is the real cause for the disproportionate rate of abortions. This is based on the false claim that communities of color have greater access to facilities providing abortion care.⁵ As with other forms of health care, these communities are lacking access to comprehensive reproductive health care to address glaring ethnic and racial disparities in rates of unintended pregnancy, maternal mortality and poor infant health outcomes.

Banning “Sex-Selective” Abortions Does Not In Any Way Address the Root Causes of Son Preference

The social and economic factors that would cause a woman to terminate a pregnancy based on the sex of the fetus are troubling, even though evidence on “sex selective” abortions in the United States is limited.⁶ But a ban on sex selective abortions does nothing to address the root of the problem, which is family preference for a son. Such son preference 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.”⁷ 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.⁸ 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.

Abortion Bans May Endanger Women’s Lives

There are women who are compelled by the circumstances of their lives to not carry a pregnancy to term because both the woman and her daughter will be subjected to a lifetime of abuse or neglect. Under such circumstances, these women may still terminate their pregnancies by evading detection of a sex-selective abortion. And those 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.

Abortion Bans Undermine the Trusted Relationship Between a Provider and Patient

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.”⁹ Doctors, nurses and counselors are in the best position to identify and assist a patient when it appears that she is being unduly subject 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

- 1 Hearing on H.R. 3541, the Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act (PRENDA) of 2011, House Judiciary Committee, Subcommittee on the Constitution (Dec. 6, 2011) available at http://judiciary.house.gov/hearings/hear_12062011_2.html.
- 2 ACLU, Racial Profiling: Definition, available at <http://www.aclu.org/racial-justice/racial-profiling-definition> (Nov. 23, 2005).
- 3 Susan A. Cohen, Abortion and Women of Color: The Bigger Picture, Guttmacher Institute, Guttmacher Policy Review, vol. 11, no. 3 (Summer 2008).
- 4 Associated Press, Police: Parents’ Kidnap Plot Motivated by Race: 19-year-old Carrying Black Man’s Child Says Parents Tried to Force Abortion (Sept. 19, 2006).
- 5 Guttmacher Advisory, Claim that Most Abortion Clinics Are Located in Black Neighborhoods Is False, (Guttmacher Institute, Jan. 2011), available at <http://www.guttmacher.org/media/evidencecheck/2011/01/19/Guttmacher-Advisory.pdf>.
- 6 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 selective 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 selective 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).
- 7 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.
- 8 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.).
- 9 National Abortion Federation, Clinical Policy Guidelines, Informed Consent, 3, available at www.prochoice.org/pubs_research/publications/downloads/profes-sional_education/2011%20CPGs.pdf.