

110TH CONGRESS
2D SESSION

H. R. 7016

To prohibit discrimination against the unborn on the basis of sex or race,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 2008

Mr. FRANKS of Arizona (for himself, Mr. TAYLOR, Mr. FORTENBERRY, Mr. LIPINSKI, Mr. SMITH of Texas, and Mr. PENCE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit discrimination against the unborn on the basis
of sex or race, and for other purposes.

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 “Susan B. Anthony Pre-
5 natal Nondiscrimination Act of 2008”.

6 **SEC. 2. FINDINGS AND CONSTITUTIONAL AUTHORITY.**

7 (a) FINDINGS.—The Congress makes the following
8 findings:

9 (1) SEX DISCRIMINATION FINDINGS.—

1 (A) Women are a vital part of American
2 society and culture and possess the same funda-
3 mental human rights and civil rights as men.

4 (B) United States law prohibits the dis-
5 similar treatment for males and females who
6 are similarly situated and prohibits sex dis-
7 crimination in various contexts, including the
8 provision of employment, education, housing,
9 health insurance coverage, and athletics.

10 (C) Sex is an immutable characteristic,
11 and is ascertainable at the earliest stages of
12 human development through existing medical
13 technology and procedures commonly in use, in-
14 cluding maternal-fetal bloodstream DNA sam-
15 pling, amniocentesis, chorionic villus sampling
16 or “CVS”, and medical sonography. In addition
17 to medically assisted sex-determination carried
18 out by medical professionals, a growing sex-de-
19 termination niche industry has developed and is
20 marketing low-cost commercial products, widely
21 advertised and available, that aid in the sex de-
22 termination of an unborn child without the aid
23 of medical professionals. Experts have dem-
24 onstrated that the sex-selection industry is on
25 the rise and predict that it will continue to be

1 a growing trend in the United States. Sex de-
2 termination is always a necessary step to the
3 procurement of a sex-selection abortion.

4 (D) A “sex-selection abortion” is an abor-
5 tion undertaken for purposes of eliminating an
6 unborn child of an undesired sex. Sex-selection
7 abortion is barbaric, and described by scholars
8 and civil rights advocates as an act of sex-based
9 or gender-based violence, predicated on sex dis-
10 crimination. By definition, sex-selection abor-
11 tions do not implicate the health of the mother
12 of the unborn, but instead are elective proce-
13 dures motivated by sex or gender bias.

14 (E) The targeted victims of sex-selection
15 abortions performed in the United States and
16 worldwide are overwhelmingly female. The se-
17 lective abortion of females has been termed “fe-
18 male infanticide” and is defined by the United
19 Nations Children’s Fund and the United Na-
20 tions Population Fund (UNPFA) in its 2005
21 Programme of Action of the International Con-
22 ference on Population and Development as the
23 intentional killing of unborn females due to the
24 preference for male offspring or “son pref-
25 erence”. According to the UNPFA, son pref-

1 erence is reinforced by the low value associated,
2 by some segments of the world community, with
3 female offspring. Those segments tend to re-
4 gard female offspring as financial burdens to a
5 family over their lifetime due to their perceived
6 inability to earn or provide financially for the
7 family unit as can a male. In addition, due to
8 social and legal convention, female offspring are
9 less likely to carry on the family name. “Son
10 preference” is one of the most evident mani-
11 festations of sex or gender discrimination in
12 any society, undermining female equality, and
13 fueling the elimination of females’ right to exist
14 in instances of sex-selection abortion.

15 (F) Sex-selection abortions are not ex-
16 pressly prohibited by United States law and the
17 laws of 48 States. Sex-selection abortions are
18 performed in the United States. In a March
19 2008 report published in the Proceedings of the
20 National Academy of Sciences, Columbia Uni-
21 versity economists Douglas Almond and Lena
22 Edlund examined the sex ratio of United
23 States-born children and found “evidence of sex
24 selection, most likely at the prenatal stage”.
25 The data revealed obvious “son preference” in

1 the form of unnatural sex-ratio imbalances
2 within certain segments of the United States
3 population, primarily those segments tracing
4 their ethnic or cultural origins to countries
5 where sex-selection abortion is prevalent. The
6 evidence strongly suggests that some Americans
7 are exercising sex-selection abortion practices
8 within the United States consistent with dis-
9 criminatory practices common to their country
10 of origin, or the country to which they trace
11 their ancestry. While sex-selection abortions are
12 more common outside the United States, the
13 evidence reveals that female feticide is also oc-
14 ccurring in the United States.

15 (G) The American public supports a prohi-
16 bition of sex-selection abortion. In a March
17 2006 Zogby International poll, 86 percent of
18 Americans agreed that sex-selection abortion
19 should be illegal, yet only two States have pro-
20 scribed sex-selection abortion.

21 (H) Despite the failure of the United
22 States to proscribe sex-selection abortion, the
23 United States Congress has expressed repeat-
24 edly, through Congressional resolution, strong
25 condemnation of policies promoting sex-selec-

1 tion abortion in the “Communist Government
2 of China”. Likewise, at the 2007 United Na-
3 tion’s Annual Meeting of the Commission on
4 the Status of Women, 51st Session, the United
5 States’ delegation spearheaded a resolution call-
6 ing on countries to eliminate sex-selective abor-
7 tion, a policy directly contradictory to the per-
8 missiveness of current United States’ law,
9 which places no restriction on the practice of
10 sex-selection abortion. The 2005 Annual Report
11 of the United Nations Population Fund reflects
12 agreement with the United States’ position,
13 stating that aborting a “girl child” is “gender-
14 based violence”, “one of the most pervasive
15 human rights abuses”, and “the most extreme
16 form of violence against women”. The United
17 Nations Commission on the Status of Women
18 has urged governments of all nations “to take
19 necessary measures to prevent . . . prenatal
20 sex selection”.

21 (I) A 1990 report by Harvard University
22 economist Amartya Sen, estimated that more
23 than 100 million women were “demographically
24 missing” from the world as early as 1990 due
25 to sexist practices, including sex-selection abor-

1 tion. Many experts believe sex-selection abortion
2 is the primary cause. As of 2008, estimates of
3 women missing from the world range in the
4 hundreds of millions.

5 (J) Countries with longstanding experience
6 with sex-selection abortion—such as the Repub-
7 lic of India, the United Kingdom, and the Peo-
8 ple’s Republic of China—have enacted complete
9 bans on sex-selection abortion, and have stead-
10 ily continued to strengthen prohibitions and
11 penalties. The United States, by contrast, has
12 no law in place to restrict sex-selection abor-
13 tion, establishing the United States as affording
14 less protection from sex-based feticide than the
15 Republic of India or the People’s Republic of
16 China, whose recent practices of sex-selection
17 abortion were vehemently and repeatedly con-
18 demned by United States congressional resolu-
19 tions and by the United States’ Ambassador to
20 the Commission on the Status of Women. Pub-
21 lic statements from within the medical commu-
22 nity reveal that citizens of other countries come
23 to the United States for sex-selection proce-
24 dures that would be criminal in their country of
25 origin. Because the United States permits abor-

1 tion on the basis of sex, the United States may
2 effectively function as a “safe haven” for those
3 who seek to have American physicians do what
4 would otherwise be criminal in their home coun-
5 tries—a sex-selection abortion, most likely late-
6 term.

7 (K) The American medical community op-
8 poses sex-selection abortion. The American Col-
9 lege of Obstetricians and Gynecologists, com-
10 monly known as “ACOG”, stated in its Feb-
11 ruary 2007 Ethics Committee Opinion, Number
12 360, that sex-selection is inappropriate for fam-
13 ily planning purposes because sex-selection “ul-
14 timately supports sexist practices”. Likewise,
15 the American Society for Reproductive Medicine
16 has opined that sex-selection for family plan-
17 ning purposes is ethically problematic, inappro-
18 priate, and should be discouraged.

19 (L) Sex-selection abortion results in an un-
20 natural sex ratio imbalance. An unnatural sex
21 ratio imbalance is undesirable, due to the in-
22 ability of the numerically predominant sex to
23 find mates. Experts worldwide document that a
24 significant sex ratio imbalance in which males
25 numerically predominate can be a cause of in-

1 creased violence and militancy within a society.
2 Likewise, an unnatural sex ratio imbalance
3 gives rise to the commoditization of humans in
4 the form of human trafficking, and a con-
5 sequent increase in kidnapping and other vio-
6 lent crime.

7 (M) Sex-selection abortions have the effect
8 of diminishing the representation of women in
9 the American population, and therefore, the
10 American electorate.

11 (N) Sex-selection abortion reinforces sex
12 discrimination and has no place in a civilized
13 society.

14 (2) RACIAL DISCRIMINATION FINDINGS.—

15 (A) Minorities are a vital part of American
16 society and culture and possess the same funda-
17 mental human rights and civil rights as the ma-
18 jority.

19 (B) United States law prohibits the dis-
20 similar treatment of persons of different races
21 who are similarly situated. United States law
22 prohibits discrimination on the basis of race in
23 various contexts, including the provision of em-
24 ployment, education, housing, health insurance
25 coverage, and athletics.

1 (C) A “race-selection abortion” is an abor-
2 tion performed for purposes of eliminating an
3 unborn child because the child or a parent of
4 the child is of an undesired race. Race-selection
5 abortion is barbaric, and described by civil
6 rights advocates as an act of race-based vio-
7 lence, predicated on race discrimination. By
8 definition, race-selection abortions do not impli-
9 cate the health of mother of the unborn, but in-
10 stead are elective procedures motivated by race
11 bias.

12 (D) No State has enacted law to proscribe
13 the performance of race-selection abortions.

14 (E) Race-selection abortions have the ef-
15 fect of diminishing the number of minorities in
16 the American population and therefore, the
17 American electorate.

18 (F) Race-selection abortion reinforces ra-
19 cial discrimination and has no place in a civ-
20 ilized society.

21 (3) GENERAL FINDING.—

22 (A) The history of the United States in-
23 cludes examples of both sex discrimination and
24 race discrimination. The people of the United
25 States ultimately responded in the strongest

1 possible legal terms by enacting constitutional
2 amendments correcting elements of such dis-
3 crimination. Women, once subjected to sex dis-
4 crimination that denied them the right to vote,
5 now have that right guaranteed by the 19th
6 amendment. African-Americans, once subjected
7 to race discrimination through slavery that de-
8 nied them equal protection of the laws, now
9 have that right guaranteed by the 14th amend-
10 ment. The elimination of discriminatory prac-
11 tices has been and is among the highest prior-
12 ities and greatest achievements of American
13 history.

14 (B) Implicitly approving the discriminatory
15 practices of sex-selection abortion and race-se-
16 lection abortion by choosing not to prohibit
17 them will reinforce these inherently discrimina-
18 tory practices, and evidence a failure to protect
19 a segment of certain unborn Americans because
20 those unborn are of a sex or racial makeup that
21 is disfavored by some segments of American so-
22 ciety. Sex-selection and race-selection abortions
23 trivialize the value of the unborn on the basis
24 of sex or race, reinforcing sex and race dis-
25 crimination, and coarsening society to the hu-

1 manity of all vulnerable and innocent human
 2 life, making it increasingly difficult to protect
 3 such life. Thus, Congress has a compelling in-
 4 terest in acting—indeed it must act—to pro-
 5 hibit sex-selection abortion and race-selection
 6 abortion.

7 (b) CONSTITUTIONAL AUTHORITY.—In accordance
 8 with the above findings, Congress enacts the following
 9 pursuant to Congress’ power under section 2 of the 13th
 10 amendment and section 5 of the 14th amendment to en-
 11 force those amendments, including the prohibition on gov-
 12 ernment action denying equal protection of the laws, and
 13 the power to pass all legislation necessary and proper for
 14 the carrying into execution of these powers.

15 **SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE**
 16 **BASIS OF RACE OR SEX.**

17 (a) IN GENERAL.—Chapter 13 of title 18, United
 18 States Code, is amended by adding at the end the fol-
 19 lowing:

20 **“§ 249. Discrimination against the unborn on the**
 21 **basis of race or sex**

22 “(a) IN GENERAL.—Whoever knowingly—

23 “(1) performs an abortion knowing that such
 24 abortion is sought based on the sex, gender, color or

1 race of the child, or the race of a parent of that
2 child;

3 “(2) uses force or the threat of force to inten-
4 tionally injure or intimidate any person for the pur-
5 pose of coercing a sex-selection or race-selection
6 abortion, or attempts to do so; or

7 “(3) solicits or accepts funds for the purpose of
8 financing a sex-selection abortion or a race-selection
9 abortion;

10 shall be fined under this title or imprisoned not more than
11 5 years, or both.

12 “(b) CIVIL REMEDIES.—

13 “(1) INJUNCTIVE RELIEF.—The Attorney Gen-
14 eral may in a civil action obtain appropriate prospec-
15 tive injunctive relief to enjoin a violation of sub-
16 section (a).

17 “(2) LOSS OF FEDERAL FUNDING.—A violation
18 of subsection (a) shall be deemed for the purposes
19 of title VI of the Civil Rights Act of 1964 to be dis-
20 crimination prohibited by section 601 of that Act.

21 “(3) PRIVATE CAUSE OF ACTION.—The father,
22 if married to the mother at the time she receives a
23 sex-selection abortion or a race-selection abortion,
24 or, if the mother has not attained the age of 18
25 years at the time of the abortion, the maternal

1 grandparents of the unborn, may on behalf of the
2 unborn in a civil action obtain appropriate relief
3 with respect to a violation of subsection (a). The
4 court may award a reasonable attorney’s fee as part
5 of the costs in an action under this paragraph. Ap-
6 propriate relief includes money damages for all inju-
7 ries (whether psychological, physical, or financial, in-
8 cluding loss of companionship and support) occa-
9 sioned by the violation.

10 “(c) REPORTING REQUIREMENT.—A physician, phy-
11 sician’s assistant, nurse, counselor, or other medical or
12 mental health professional shall report known or suspected
13 violations of any of this section to appropriate law enforce-
14 ment authorities. Whoever violates this requirement shall
15 be fined under this title or imprisoned not more than 1
16 year, or both.

17 “(d) EXPEDITED CONSIDERATION.—It shall be the
18 duty of the United States district courts, United States
19 courts of appeal, and the Supreme Court of the United
20 States to advance on the docket and to expedite to the
21 greatest possible extent the disposition of any matter
22 brought under this section.

23 “(e) EXCEPTION.—A woman upon whom a sex-selec-
24 tion or race-selection abortion is performed may not be

1 prosecuted or held civilly liable for any violation of this
2 section, or for a conspiracy to violate this section.

3 “(f) DEFINITION.—The term ‘abortion’ means the
4 act of using or prescribing any instrument, medicine,
5 drug, or any other substance, device, or means with the
6 intent to terminate the clinically diagnosable pregnancy of
7 a woman, with knowledge that the termination by those
8 means will with reasonable likelihood cause the death of
9 the unborn child, unless the act is done with the intent
10 to—

11 “(1) save the life or preserve the health of the
12 unborn child;

13 “(2) remove a dead unborn child caused by
14 spontaneous abortion; or

15 “(3) remove an ectopic pregnancy.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of chapter 13 of title 18, United States
18 Code, is amended by adding after the item relating to sec-
19 tion 248 the following new item:

“249. Discrimination against the unborn on the basis of race or sex.”.

20 **SEC. 4. SEVERABILITY.**

21 If any portion of this Act or the application thereof
22 to any person or circumstance is held invalid, such inva-
23 lidity shall not affect the portions or applications of this

- 1 Act which can be given effect without the invalid portion
- 2 or application.

