

112TH CONGRESS
1ST SESSION

H. R. 3541

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2011

Mr. FRANKS of Arizona (for himself, Mr. COLE, Mr. HUELSKAMP, Mr. LANKFORD, Mr. FLEMING, Mr. BISHOP of Utah, Mr. PENCE, Mr. CHABOT, Mr. POSEY, Mr. GRAVES of Georgia, Mr. GOHMERT, Mr. HULTGREN, Mr. GARRETT, Mrs. SCHMIDT, Mr. BRADY of Texas, Mr. FORBES, Mr. WILSON of South Carolina, Mr. STUTZMAN, Mrs. LUMMIS, Mr. ROE of Tennessee, Mr. NEUGEBAUER, Mr. HARRIS, Mr. YODER, Mr. WALBERG, Mr. BOREN, Mr. BARTLETT, Mr. SMITH of Texas, Mr. LIPINSKI, Mrs. BLACK, Mr. BOUSTANY, Mr. WESTMORELAND, Mr. PEARCE, Mr. HUIZENGA of Michigan, Mr. ROSS of Florida, Mr. KINZINGER of Illinois, Mr. BURTON of Indiana, Mr. AKIN, Mr. FORTENBERRY, Mr. JONES, Mr. DUNCAN of Tennessee, Mrs. BLACKBURN, Mr. CRAWFORD, Mr. McCAUL, Mr. BROUN of Georgia, Mr. MANZULLO, Mr. MCHENRY, Mr. LATTA, Mrs. ROBY, Mr. SCALISE, Mr. FARENTHOLD, Mr. McCOTTER, Mr. COBLE, Mr. MILLER of Florida, Mr. PETERSON, and Mr. SMITH of New Jersey) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Susan B. Anthony and
3 Frederick Douglass Prenatal Nondiscrimination Act of
4 2011”.

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

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

8 (1) SEX DISCRIMINATION FINDINGS.—

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

12 (B) United States law prohibits the dis-
13 similar treatment of males and females who are
14 similarly situated and prohibits sex discrimina-
15 tion in various contexts, including the provision
16 of employment, education, housing, health in-
17 surance coverage, and athletics.

18 (C) Sex is an immutable characteristic as-
19 certainable at the earliest stages of human de-
20 velopment through existing medical technology
21 and procedures commonly in use, including ma-
22 ternal-fetal bloodstream DNA sampling,
23 amniocentesis, chorionic villus sampling or
24 “CVS”, and obstetric ultrasound. In addition to
25 medically assisted sex-determination, a growing
26 sex-determination niche industry has developed

1 and is marketing low-cost commercial products,
2 widely advertised and available, that aid in the
3 sex determination of an unborn child without
4 the aid of medical professionals. Experts have
5 demonstrated that the sex-selection industry is
6 on the rise and predict that it will continue to
7 be a growing trend in the United States. Sex
8 determination is always a necessary step to the
9 procurement of a sex-selection abortion.

10 (D) A “sex-selection abortion” is an abor-
11 tion undertaken for purposes of eliminating an
12 unborn child of an undesired sex. Sex-selection
13 abortion is barbaric, and described by scholars
14 and civil rights advocates as an act of sex-based
15 or gender-based violence, predicated on sex dis-
16 crimination. Sex-selection abortions are typi-
17 cally late-term abortions performed in the 2nd
18 or 3rd trimester of pregnancy, after the unborn
19 child has developed sufficiently to feel pain.
20 Substantial medical evidence proves that an un-
21 born child can experience pain at 20 weeks
22 after conception, and perhaps substantially ear-
23 lier. By definition, sex-selection abortions do
24 not implicate the health of the mother of the

1 unborn, but instead are elective procedures mo-
2 tivated by sex or gender bias.

3 (E) The targeted victims of sex-selection
4 abortions performed in the United States and
5 worldwide are overwhelmingly female. The se-
6 lective abortion of females is female infanticide,
7 the intentional killing of unborn females, due to
8 the preference for male offspring or “son pref-
9 erence”. Son preference is reinforced by the low
10 value associated, by some segments of the world
11 community, with female offspring. Those seg-
12 ments tend to regard female offspring as finan-
13 cial burdens to a family over their lifetime due
14 to their perceived inability to earn or provide fi-
15 nancially for the family unit as can a male. In
16 addition, due to social and legal convention, fe-
17 male offspring are less likely to carry on the
18 family name. “Son preference” is one of the
19 most evident manifestations of sex or gender
20 discrimination in any society, undermining fe-
21 male equality, and fueling the elimination of fe-
22 males’ right to exist in instances of sex-selection
23 abortion.

24 (F) Sex-selection abortions are not ex-
25 pressly prohibited by United States law or the

1 laws of 47 States. Sex-selection abortions are
2 performed in the United States. In a March
3 2008 report published in the Proceedings of the
4 National Academy of Sciences, Columbia Uni-
5 versity economists Douglas Almond and Lena
6 Edlund examined the sex ratio of United
7 States-born children and found “evidence of sex
8 selection, most likely at the prenatal stage”.
9 The data revealed obvious “son preference” in
10 the form of unnatural sex-ratio imbalances
11 within certain segments of the United States
12 population, primarily those segments tracing
13 their ethnic or cultural origins to countries
14 where sex-selection abortion is prevalent. The
15 evidence strongly suggests that some Americans
16 are exercising sex-selection abortion practices
17 within the United States consistent with dis-
18 criminatory practices common to their country
19 of origin, or the country to which they trace
20 their ancestry. While sex-selection abortions are
21 more common outside the United States, the
22 evidence reveals that female feticide is also oc-
23 ccurring in the United States.

24 (G) The American public supports a prohi-
25 bition of sex-selection abortion. In a March

1 2006 Zogby International poll, 86 percent of
2 Americans agreed that sex-selection abortion
3 should be illegal, yet only 3 States proscribe
4 sex-selection abortion.

5 (H) Despite the failure of the United
6 States to proscribe sex-selection abortion, the
7 United States Congress has expressed repeat-
8 edly, through Congressional resolution, strong
9 condemnation of policies promoting sex-selec-
10 tion abortion in the “Communist Government
11 of China”. Likewise, at the 2007 United Na-
12 tion’s Annual Meeting of the Commission on
13 the Status of Women, 51st Session, the United
14 States delegation spearheaded a resolution call-
15 ing on countries to condemn sex-selective abor-
16 tion, a policy directly contradictory to the per-
17 missiveness of current United States law, which
18 places no restriction on the practice of sex-se-
19 lection abortion. The United Nations Commis-
20 sion on the Status of Women has urged govern-
21 ments of all nations “to take necessary meas-
22 ures to prevent . . . prenatal sex selection”.

23 (I) A 1990 report by Harvard University
24 economist Amartya Sen, estimated that more
25 than 100 million women were “demographically

1 missing” from the world as early as 1990 due
2 to sexist practices, including sex-selection abor-
3 tion. Many experts believe sex-selection abortion
4 is the primary cause. Current estimates of
5 women missing from the world range in the
6 hundreds of millions.

7 (J) Countries with longstanding experience
8 with sex-selection abortion—such as the Repub-
9 lic of India, the United Kingdom, and the Peo-
10 ple’s Republic of China—have enacted restric-
11 tions on sex-selection, and have steadily contin-
12 ued to strengthen prohibitions and penalties.
13 The United States, by contrast, has no law in
14 place to restrict sex-selection abortion, estab-
15 lishing the United States as affording less pro-
16 tection from sex-based feticide than the Repub-
17 lic of India or the People’s Republic of China,
18 whose recent practices of sex-selection abortion
19 were vehemently and repeatedly condemned by
20 United States congressional resolutions and by
21 the United States Ambassador to the Commis-
22 sion on the Status of Women. Public state-
23 ments from within the medical community re-
24 veal that citizens of other countries come to the
25 United States for sex-selection procedures that

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

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

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

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

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

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

15 (2) RACIAL DISCRIMINATION FINDINGS.—

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

20 (B) United States law prohibits the dis-
21 similar treatment of persons of different races
22 who are similarly situated. United States law
23 prohibits discrimination on the basis of race in
24 various contexts, including the provision of em-

1 employment, education, housing, health insurance
2 coverage, and athletics.

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

14 (D) Only one State, Arizona, has enacted
15 law to proscribe the performance of race-selec-
16 tion abortions.

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

21 (F) Race-selection abortion reinforces ra-
22 cial discrimination and has no place in a civ-
23 ilized society.

24 (3) GENERAL FINDINGS.—

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

18 (B) Implicitly approving the discriminatory
19 practices of sex-selection abortion and race-se-
20 lection abortion by choosing not to prohibit
21 them will reinforce these inherently discrimina-
22 tory practices, and evidence a failure to protect
23 a segment of certain unborn Americans because
24 those unborn are of a sex or racial makeup that
25 is disfavored. Sex-selection and race-selection

1 abortions trivialize the value of the unborn on
2 the basis of sex or race, reinforcing sex and
3 race discrimination, and coarsening society to
4 the humanity of all vulnerable and innocent
5 human life, making it increasingly difficult to
6 protect such life. Thus, Congress has a compel-
7 ling interest in acting—indeed it must act—to
8 prohibit sex-selection abortion and race-selec-
9 tion abortion.

10 (b) CONSTITUTIONAL AUTHORITY.—In accordance
11 with the above findings, Congress enacts the following
12 pursuant to Congress' power under—

13 (1) the Commerce Clause;

14 (2) section 2 of the 13th amendment;

15 (3) section 5 of the 14th amendment, including
16 the power to enforce the prohibition on government
17 action denying equal protection of the laws; and

18 (4) section 8 of article I to make all laws nec-
19 essary and proper for the carrying into execution of
20 powers vested by the Constitution in the Govern-
21 ment of the United States.

1 **SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE**
2 **BASIS OF RACE OR SEX.**

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

6 **“§ 250. Discrimination against the unborn on the**
7 **basis of race or sex**

8 “(a) IN GENERAL.—Whoever knowingly—

9 “(1) performs an abortion knowing that such
10 abortion is sought based on the sex, gender, color or
11 race of the child, or the race of a parent of that
12 child;

13 “(2) uses force or the threat of force to inten-
14 tionally injure or intimidate any person for the pur-
15 pose of coercing a sex-selection or race-selection
16 abortion;

17 “(3) solicits or accepts funds for the perform-
18 ance of a sex-selection abortion or a race-selection
19 abortion; or

20 “(4) transports a woman into the United States
21 or across a State line for the purpose of obtaining
22 a sex-selection abortion or race-selection abortion;
23 or attempts to do so, shall be fined under this title or im-
24 prisoned not more than 5 years, or both.

25 “(b) CIVIL REMEDIES.—

1 “(1) CIVIL ACTION BY WOMAN ON WHOM THE
2 ABORTION IS PERFORMED.—A woman upon whom
3 an abortion has been performed or attempted in vio-
4 lation of subsection (a)(2), may in a civil action
5 against any person who engaged in the violation ob-
6 tain appropriate relief.

7 “(2) CIVIL ACTION BY RELATIVES.—The father
8 of an unborn child who is the subject of an abortion
9 performed or attempted in violation of subsection
10 (a), or a maternal grandparent of the unborn child
11 if the pregnant woman is an unemancipated minor,
12 may in a civil action against any person who en-
13 gaged in the violation, obtain appropriate relief, un-
14 less the pregnancy resulted from the plaintiff’s
15 criminal conduct or the plaintiff consented to the
16 abortion.

17 “(3) APPROPRIATE RELIEF.—Appropriate relief
18 in a civil action under this subsection includes—

19 “(A) objectively verifiable money damages
20 for all injuries, psychological and physical, in-
21 cluding loss of companionship and support, oc-
22 casioned by the violation of this section; and

23 “(B) punitive damages.

24 “(4) INJUNCTIVE RELIEF.—

1 “(A) IN GENERAL.—A qualified plaintiff
2 may in a civil action obtain injunctive relief to
3 prevent an abortion provider from performing
4 or attempting further abortions in violation of
5 this section.

6 “(B) DEFINITION.—In this paragraph the
7 term ‘qualified plaintiff’ means—

8 “(i) a woman upon whom an abortion
9 is performed or attempted in violation of
10 this section;

11 “(ii) any person who is the spouse or
12 parent of a woman upon whom an abortion
13 is performed in violation of this section; or

14 “(iii) the Attorney General.

15 “(5) ATTORNEYS FEES FOR PLAINTIFF.—The
16 court shall award a reasonable attorney’s fee as part
17 of the costs to a prevailing plaintiff in a civil action
18 under this subsection.

19 “(c) LOSS OF FEDERAL FUNDING.—A violation of
20 subsection (a) shall be deemed for the purposes of title
21 VI of the Civil Rights Act of 1964 to be discrimination
22 prohibited by section 601 of that Act.

23 “(d) REPORTING REQUIREMENT.—A physician, phy-
24 sician’s assistant, nurse, counselor, or other medical or
25 mental health professional shall report known or suspected

1 violations of any of this section to appropriate law enforce-
2 ment authorities. Whoever violates this requirement shall
3 be fined under this title or imprisoned not more than 1
4 year, or both.

5 “(e) EXPEDITED CONSIDERATION.—It shall be the
6 duty of the United States district courts, United States
7 courts of appeal, and the Supreme Court of the United
8 States to advance on the docket and to expedite to the
9 greatest possible extent the disposition of any matter
10 brought under this section.

11 “(f) EXCEPTION.—A woman upon whom a sex-selec-
12 tion or race-selection abortion is performed may not be
13 prosecuted or held civilly liable for any violation of this
14 section, or for a conspiracy to violate this section.

15 “(g) DEFINITION.—The term ‘abortion’ means the
16 act of using or prescribing any instrument, medicine,
17 drug, or any other substance, device, or means with the
18 intent to terminate the clinically diagnosable pregnancy of
19 a woman, with knowledge that the termination by those
20 means will with reasonable likelihood cause the death of
21 the unborn child, unless the act is done with the intent
22 to—

23 “(1) save the life or preserve the health of the
24 unborn child;

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

3 “(3) remove an ectopic pregnancy.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of chapter 13 of title 18, United States
6 Code, is amended by adding after the item relating to sec-
7 tion 249 the following new item:

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

8 **SEC. 4. SEVERABILITY.**

9 If any portion of this Act or the application thereof
10 to any person or circumstance is held invalid, such inva-
11 lidity shall not affect the portions or applications of this
12 Act which can be given effect without the invalid portion
13 or application.

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