



Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011 (H.R.3541)
An Attack on the Reproductive Rights of Women of Color

Testimony Presented by

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On Behalf of

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U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution

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Members of the House Judiciary Subcommittee on the Constitution: I am honored to submit this testimony.

Today you are considering the Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011 (H.R.3541), introduced by Rep. Trent Franks (R-AZ). Contrary to its title, the bill does nothing to address our country's real problems of racism and sexism, but instead could subject a doctor to up to five years in prison for failing to determine if race or sex is a factor in a woman's decision to terminate a pregnancy. Ultimately, the legislation could erect new barriers to reproductive-health care for women and perpetuates stereotypes about immigrant communities and communities of color.

As a reproductive-rights organization committed to diversity, NARAL Pro-Choice America believes that all individuals—no matter their racial or ethnic background—have the right to make personal decisions regarding their reproductive lives. We affirm that women of color are the best decision makers regarding their reproductive choices, and we support policies that address reproductive-health disparities. We condemn gender bias that contributes to pressures to have a child of a particular sex, but believe there are ways to combat gender inequity without threatening a woman's right to make the best decision for herself and her family.

For these reasons, we oppose the Franks legislation. It is an insincere attempt to help the communities with which it claims to be concerned, and is nothing more than a disingenuous attempt to block access to abortion.

The Franks Bill Could Block Women's Reproductive-Health Care and Harm the Very Communities It Purports to Protect

The Franks bill could lead to unprecedented restrictions on the constitutionally protected right to choose for targeted groups of women. No patient should ever be subjected to more scrutiny or control based on her racial or ethnic background, yet that is exactly what could happen if this bill becomes law. Thus rather than eliminate discrimination, this bill entrenches it even more deeply. The bill likely would restrict the ability of women of color to obtain abortion care, and ultimately could jeopardize the availability of abortion services for all women.

Given that the Franks bill subjects providers to fines or a prison sentence for failure to detect that a woman is seeking abortion services for reasons of race or sex selection, the legislation essentially would encourage racial profiling in the doctor's office. The legislation's de facto requirement that abortion providers screen for race or sex selection means that a doctor would have to question a woman about her racial and ethnic heritage and about the race and background of her partner in order to detect motivations related to the expected race or sex of the fetus. This demonstrates a clear intrusion into patient privacy and does nothing to facilitate trust between doctor and patient.

Further, in order to protect themselves against the law's harsh penalties, including jail time and loss of all federal funds, the bill could compel providers to single out women of color for greater scrutiny. To avoid increased legal and financial liability, providers and reproductive-health centers may even cease providing abortion care to entire groups they perceive to be most "at risk" for such practices, thereby diminishing access for women of color and immigrant women to necessary medical care. This would further exacerbate existing health disparities. Despite a purported interest in assisting marginalized groups, the bill would serve only to isolate and stigmatize these women.

This bill gives the federal government unprecedented authority to interfere with a woman's right to choose. Disturbingly, the legislation mandates that health-care providers report known or even suspected violations of the legislation to law-enforcement authorities and allows specific parties, including the attorney general, to sue to block a woman's access to abortion services based on the reason she is seeking such care. Every woman has unique considerations and circumstances that inform her decision-making process, and she is in the best position to make the right decision for herself and her family. For instance, the bill does not even include exceptions to protect a woman's life or health, not does it permit abortion care sought in cases where debilitating or even fatal sex-linked diseases are detected through genetic testing. By requiring that health-care providers report the details of a woman's private medical care to the government and by holding providers financially and criminally liable for the reasons a woman makes personal health decisions, the law intrudes into the doctor-patient relationship and represents an initial step towards eroding the right to privacy, which includes the right to choose.

A Ban on Race-Selective Abortion

It is clear that this bill is a thinly veiled attempt to block access to abortion for communities of color under the guise of anti-discrimination policy. The bill's sponsor has claimed that abortion has resulted in a form of genocide in the African-American community.¹ Further, the findings section of the bill reinforces the belief that abortion rights have negatively affected communities of color. However, we believe that the true aim of the bill is to restrict the pregnancy decisions of black women rather than protect them from alleged coercion.

Trust Black Women (TBW), a coalition of African-American women and women-of-color-led organizations, has strongly rejected the notion of "race-selective" abortion as nothing more than an attempt to undermine black women's autonomy and self-determination.² Loretta Ross, a founding member of TBW and national coordinator of the SisterSong Women of Color Reproductive Justice Collective noted:

The Black anti-abortion movement doesn't represent our views and we are not fooled into thinking that they care about gender justice for women... They tell African American women that we are now responsible for the genocide of our own people. Talk

about a “blame the victim” strategy! We are now accused of “lynching” our children in our wombs and practicing white supremacy on ourselves.³

Proposals that claim to protect women of color by outlawing abortion based on race are insincere attempts to help this community. Instead, they deny women of color their reproductive freedom by imposing additional restrictions on abortion access, including subjecting them to invasive questioning about their intentions in seeking abortion care and threatening harsh penalties that may deter abortion providers from accepting women of color as patients. Moreover, proponents of this bill are members of the very same anti-choice majority which is attempting to dismantle the health-reform law, eliminate publicly-funded family-planning services, and slash funding for social-welfare programs that have a disproportionate impact on communities of color.

NARAL Pro-Choice America has stood in solidarity with women-of-color-led groups in opposition to the legislation from the time it was first introduced. This bill could create a two-tiered system of access based on race and ethnicity and, therefore, is antithetical to our values.

A Ban on Sex-Selective Abortion

Not only does the bill co-opt civil-rights rhetoric, it exploits sex discrimination to advance an anti-choice agenda. Sadly, there are women around the world and here at home who face pressure from family members or their community to have a child of a particular sex. However, the root causes of sexism and gender bias that drive son preference will not be addressed by limiting a woman’s access to reproductive-health care. To the contrary, abortion bans, mandatory reporting requirements, and harsh penalties on providers only further marginalize women who are already disempowered. In fact, a 2011 report from the World Health Organization and other international-health groups on efforts to combat gender-biased sex selection indicates that restricting access to abortion services without addressing social norms and cultural factors is likely to result in a greater demand for unsafe, clandestine procedures that place women’s health and lives at risk.⁴

Furthermore, community leaders like the National Asian Pacific American Women’s Forum and Raksha, a South-Asian anti-domestic violence group, have rejected previous iterations of this legislation because banning sex-selective abortion does not address underlying cultural factors that contribute to son preference. Moreover, it does nothing to empower women to take control over their reproductive health.⁵ While the Franks bill states that sex selection undermines women’s equality and erodes women’s rights, the bill itself demands unequal treatment of women by spurring racial and ethnic profiling and requiring invasive questioning about a woman’s reasons for seeking abortion care.

While some lawmakers may genuinely be concerned about sex-selective practices, this legislation simply deploys issues of sex discrimination to thwart the advancement of reproductive rights. This legislation seems to be part of a larger strategy undertaken by the anti-

choice movement to drive a wedge into the progressive community and chip away at the constitutionally protected right to choose.

Lawmakers with a true interest in addressing gender inequality should support policies and community programs that address its root causes. They should invest in policies that integrate public education with preventative-health programs, and promote fair pay and anti-discrimination policies in employment. The Franks legislation does nothing but promote an anti-choice agenda that will only serve to isolate and stigmatize women of color.

NARAL Pro-Choice America condemns gender bias that contributes to pressures to have a child of a particular sex, and we believe policies should be directed at combating gender inequity, rather than blocking access to reproductive-care and privacy.

Conclusion

The divisive provisions in the Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011 serve no legitimate health-care purpose. Rather, the legislation uses the issues of sex and race in an attempt to erode women's reproductive rights. Ultimately, the legislation wrongly would subject women of color to additional scrutiny when they access reproductive care. NARAL Pro-Choice America opposes this legislation and urges lawmakers to respect the fundamental American values of freedom and the right to privacy by opposing this bill.

¹ Kathryn Joyce, *Is Abortion "Black Genocide"?*, COLLECTIVE VOICES, Summer 2011, at http://www.sistersong.net/documents/CollectiveVoices_Summer2011_rf2.pdf (last visited Dec. 4, 2011)

² Belle Taylor-McGhee, *Trust Black Women Talking Points*, COLLECTIVE VOICES, Summer 2011, at http://www.sistersong.net/documents/CollectiveVoices_Summer2011_rf2.pdf (last visited Dec. 4, 2011)

³ Loretta Ross, *Re-enslaving African-American Women*, On the Issues, Fall 2008, at <http://www.ontheissuesmagazine.com/2008fall/cafe2/article/22> (last visited Dec. 4, 2011)

⁴ World Health Organization, *Preventing Gender-Biased Sex Selection: An Interagency Statement of OHCHR, UNFPA, UNICEF, UN Women and WHO*, at http://whqlibdoc.who.int/publications/2011/9789241501460_eng.pdf (last visited Dec. 4, 2011)

⁵ SisterSong, *Race, Gender and Abortion: How Reproductive Activists Won in Georgia*, Oct. 2010, at <http://www.scribd.com/doc/52934613/SisterSong-Race-Gender-Policy-Report> (last visited Dec. 4, 2011)