



Race- and Sex-Selection Abortion Bans: A False Solution to the Real Problems of Racism and Sexism

For many years, anti-choice lawmakers have tried to ban abortion using every possible reason and excuse – including, now, on the grounds of purported concern about race or sex selection. Nine states have bans on race- and/or sex-selection abortion, and in 2012 a majority of members of the U.S. House of Representatives voted in support of a federal bill on this topic (H.R.3541, sponsored by Rep. Trent Franks, R-AZ).¹ In the 114th Congress, Sen. David Vitter introduced a Senate companion, S.48, and Rep. Franks reintroduced his bill, H.R.4924, and held a subcommittee hearing on the topic.

Race- and sex-selection abortion bans co-opt civil-rights language and use it to attack reproductive rights. These bills criminalize a doctor for providing abortion care if he or she fails to determine whether the race or sex of the pregnancy is a factor in the woman's decision; the Franks bill carries a five-year prison term for doctors. While proponents of these measures attempt to wrap their anti-choice agenda in civil-rights rhetoric, it is clear that this legislation's true intent is to punish doctors and chip away at a woman's right to choose.

"Race-Selection" Abortion

Supporters of a ban on "race-selection" abortion claim that abortion has resulted in a form of genocide in the African-American community, and that black women who exercise their right to choose are the perpetrators of this offense against their own race.² While African-American women and Latinas do experience higher rates of abortion than white women, this is due to higher rates of unintended pregnancy in these communities,³ and not because of any conspiracy theory advanced by sponsors of this legislation.

Sex-Selection Abortion

While claims about "race-selection" abortion are preposterous accusations leveled at black and Latina women who exercise their reproductive rights, the issue of sex-selection abortion is a legitimate concern. In some cultures there exists son preference—a preference for boy children. Though domestic data are conflicting, some reports indicate members of certain communities in the United States maintain a preference for sons over daughters. No matter how rare or

¹ Sponsors changed H.R.3541 immediately before floor consideration, limiting the bill to sex-selection abortion.

widespread, NARAL Pro-Choice America is deeply concerned with son preference and the practice of sex-selection abortion that in some cases may follow. If even one woman chooses to end a pregnancy because of coercion or pressure to have a child of a certain sex, that represents a departure from true freedom of choice and is one woman too many.

Abortion Bans Are Not the Solution

Abortion bans do nothing to change underlying cultural norms of sexism and gender bias that place greater value on boys over girls. In fact, a 2011 report on sex selection from the World Health Organization and other international-health groups 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 Yet, anti-choice proponents use the unfortunate circumstance of gender bias and inequality that may lead to sex-selection abortion as justification for their longstanding goal of banning abortion.

If elected officials wish to tackle the issue of son preference in a constructive way, they can take steps to address directly the root causes of gender bias and son preference. In fact, groups like the National Asian Pacific American Women's Forum and Raksha, a South-Asian anti-domestic violence group, which work to eliminate race and gender discrimination, are better positioned than anti-choice politicians to speak to the needs of their own communities. Importantly, these organizations oppose the Franks and Vitter bills and state bills like it.

Government Intrusion into the Doctor's Office

Race- and sex-selection abortion bans unfairly hold doctors responsible for the personal decisions that women make about their reproductive lives. These proposals essentially turn doctors into mind readers by requiring them to determine whether race or sex is a *factor* in a woman's decision to terminate a pregnancy. Despite the fact that it is impossible for an outside party to know all the considerations that have entered a woman's mind during her decision-making process, the bill carries a punishment of up to five years' imprisonment for failure to meet this standard.

In addition to the unworkable requirement that doctors' discern their patient's motivations for seeking care, the Franks bill and the Senate counterpart unleashes police-state tactics against health-care providers and exposes them to excessive legal and financial liability. The legislation mandates that doctors, nurses, and counselors report any violation of the legislation—even if it is just *suspected*—to law-enforcement authorities under penalty of one year's imprisonment. Then it gives the U.S. attorney general the power to intervene in an individual patient's medical care and block her access to abortion services if race- or sex-selection motivations are suspected.

The legislation also creates a right for a woman, her husband, or her parents (if she is a minor) to sue on behalf of the pregnancy to stop her from obtaining abortion care or to demand

monetary damages and legal fees from a doctor for providing abortion services. These bills also impose a duty on the federal court system to expedite cases of suspected race- or sex-selection abortion to the greatest possible extent. Essentially, the legislation gives the government the right to inspect people's private medical records, potentially turning one family member against another. In total, these proposals force doctors into an untenable position of risking criminal prosecution or taking a suspicious, even prosecutorial, approach to their patients.

In fact, the Franks/Vitter bills are such an egregious affront to the doctor-patient relationship that several medical groups, including the American Congress of Obstetricians and Gynecologists, the American Public Health Association, and the American Society for Reproductive Medicine, have expressed opposition. In a letter to Congress, they wrote: "Communication free from government interference allows doctors and patients to openly discuss all medical issues and is vitally important to high quality health care."⁵ And it is clear that race- and sex-selection abortion ban bills fly in the face of this basic tenet of doctor-patient confidentiality.

To Address Problems of Racism and Sexism, Better Solutions Exist

The forces behind these proposals are not genuinely concerned with improving health outcomes for the communities with which they claim to be concerned. Rather, their goal is to take away women's access to safe reproductive-health care. In fact, nearly 20 years ago, a conservative legal activist laid out a roadmap to the incremental elimination of reproductive choice. This plan featured sex-selection abortion bans as a stepping stone to an outright ban on abortion:

"From that modest beginning, we might go on to restrict abortions after the point of 'viability,' or we could ban those abortions ... because the child happens to be a female. We could move in this way, in a train of moderate steps, each one ...tending, intelligibly, to the ultimate end, which is to protect the child from its earliest moments."⁶

Charmaine Yoest, president of the anti-choice organization Americans United for Life, has also boasted that "Enacting narrowly crafted abortion restrictions has become the foundation of the pro-life movement's legal strategy in the years since *Casey*... these limited restrictions are a way of 'carefully and systematically moving towards a post-Roe era.'"⁷

Ironically, congressional supporters of this legislation who purported to be concerned with women's wellbeing simultaneously voted 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.

In fact, the federal bill's sponsors had some of the worst civil-rights voting records in Congress, as scored by the National Association for the Advancement of Colored People⁸ and the

Leadership Conference on Civil and Human Rights.⁹ And these very same lawmakers who claimed, via their sponsorship of the Franks proposal, to be concerned with gender equality consistently voted against legislation that would place women on equal footing with their male counterparts. For instance, every anti-choice member of the congressional committee that approved the Franks bill voted against amendments that would have added meaningful protections against discrimination and violence. These proposals included amendments that would have broadened the bill's prohibition against coercion to cover any pregnancy-related option, fully funded the Violence Against Women Act, and supported a study to identify and implement strategies recommended by global-health experts to discourage son preference.¹⁰

Lawmakers with a true interest in addressing racial and gender inequality should support policies and community programs that address its root causes. Rather than advancing divisive anti-abortion proposals, they could choose to integrate public education with preventive-health programs, promote fair pay and anti-discrimination policies in employment, and take other positive steps. The fact that they choose to advance this inflammatory legislation instead betrays their real goals.

Conclusion

Race- and sex-selection abortion bans serve no legitimate health-care purpose and are dangerous proposals wrapped in the rhetoric of civil rights. Despite the assertion that race- and sex-selection abortion bans protect a woman from possible coercion, the bans do nothing more than criminalize doctors for providing care to a woman without knowing her every motivation. Sadly, these bans are simply another attempt to chip away at a woman's right to choose.

January 1, 2017

Notes:

¹ NARAL Pro-Choice America internal Tracker document. States include: AZ, IL, IN, KS, NC, ND, OK, PA, SD.

² Kathryn Joyce, *Is Abortion "Black Genocide"?*, PUBLIC EYE, April 29, 2010, at <http://www.publiceye.org/magazine/v25n1/abortion-black-genocide.html> (last visited Nov. 7, 2016).

³ Susan A. Cohen *Abortion and Women of Color: The Bigger Picture* 11 GUTTMACHER POLICY REVIEW 3 (Summer 2008) at <http://www.guttmacher.org/pubs/gpr/11/3/gpr110302.html> (last visited Nov. 7, 2016).

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 Nov. 7, 2016).

⁵ Letter from American Congress of Obstetricians and Gynecologists et al. to member of the House of Representatives, (Feb. 22, 2012) (on file with author).

⁶ H.COMM. ON THE JUDICIARY, 112th CONG., 2d SESS., REPORT ON PRENATAL NONDISCRIMINATION ACT (PRENDA) OF 2012 (Comm. Print 2012).

⁷ Americans United for Life, *Bench Briefs: Politico Reports: Abortion Opponents See New Vehicle for Challenging Roe*. Hard copy on file at NARAL offices.

⁸ National Association for the Advancement of Colored People, *NAACP Federal Legislative Civil Rights Report Card: How Congress Voted 112th Congress, First Session*, at http://naacp.3cdn.net/cb0f6053dfa585f0ff_dom6vrdc6.pdf (last visited Nov. 7, 2016).

⁹ *The Leadership Conference on Civil and Human Rights Voting Record, 112th Congress First Session*, at <http://www.civilrightsdocs.info/pdf/voting-record/the-leadership-conference-voting-record-112th-congress.pdf> (last visited Nov. 7, 2016).

¹⁰ H.R.3541, *the Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Markup Before the H. Comm. on the Judiciary*, 112th Cong. (Feb. 16, 2012).