

111TH CONGRESS
1ST SESSION

H. R. 1822

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 2009

Mr. FRANKS of Arizona (for himself, Mr. ADERHOLT, Mr. AKIN, Mrs. BACHMANN, Mr. BARRETT of South Carolina, Mr. BOOZMAN, Mr. BROWN of Georgia, Mr. BURTON of Indiana, Mr. COLE, Mr. CONAWAY, Mr. FORBES, Mr. FORTENBERRY, Mr. GARRETT of New Jersey, Mr. HUNTER, Mr. KING of Iowa, Mr. LAMBORN, Mr. LATTI, Mr. LINDER, Mr. LIPINSKI, Mr. MCCOTTER, Mr. MCHENRY, Mr. PENCE, Mr. SCALISE, Mrs. SCHMIDT, Mr. SMITH of New Jersey, Mr. SMITH of Texas, Mr. SOUDER, Mr. TAYLOR, and Mr. WILSON of South Carolina) 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 and
5 Frederick Douglass Prenatal Nondiscrimination Act of
6 2009”.

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

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) SEX DISCRIMINATION FINDINGS.—

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

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

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

1 of medical professionals. Experts have dem-
2 onstrated that the sex-selection industry is on
3 the rise and predict that it will continue to be
4 a growing trend in the United States. Sex de-
5 termination is always a necessary step to the
6 procurement of a sex-selection abortion.

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

17 (E) The targeted victims of sex-selection
18 abortions performed in the United States and
19 worldwide are overwhelmingly female. The se-
20 lective abortion of females is female infanticide,
21 the intentional killing of unborn females, due to
22 the preference for male offspring or “son pref-
23 erence”. Son preference is reinforced by the low
24 value associated, by some segments of the world
25 community, with female offspring. Those seg-

1 ments tend to regard female offspring as finan-
2 cial burdens to a family over their lifetime due
3 to their perceived inability to earn or provide fi-
4 nancially for the family unit as can a male. In
5 addition, due to social and legal convention, fe-
6 male offspring are less likely to carry on the
7 family name. “Son preference” is one of the
8 most evident manifestations of sex or gender
9 discrimination in any society, undermining fe-
10 male equality, and fueling the elimination of fe-
11 males’ right to exist in instances of sex-selection
12 abortion.

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

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

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

19 (H) Despite the failure of the United
20 States to proscribe sex-selection abortion, the
21 United States Congress has expressed repeat-
22 edly, through Congressional resolution, strong
23 condemnation of policies promoting sex-selec-
24 tion abortion in the “Communist Government
25 of China”. Likewise, at the 2007 United Na-

tion’s Annual Meeting of the Commission on the Status of Women, 51st Session, the United States’ delegation spearheaded a resolution calling on countries to eliminate sex-selective abortion, a policy directly contradictory to the permissiveness of current United States’ law, which places no restriction on the practice of sex-selection abortion. The United Nations Commission on the Status of Women has urged governments of all nations “to take necessary measures to prevent . . . prenatal sex selection”.

(I) A 1990 report by Harvard University economist Amartya Sen, estimated that more than 100 million women were “demographically missing” from the world as early as 1990 due to sexist practices, including sex-selection abortion. Many experts believe sex-selection abortion is the primary cause. As of 2008, estimates of women missing from the world range in the hundreds of millions.

(J) Countries with longstanding experience with sex-selection abortion—such as the Republic of India, the United Kingdom, and the People’s Republic of China—have enacted complete

1 bans on sex-selection abortion, and have stead-
2 ily continued to strengthen prohibitions and
3 penalties. The United States, by contrast, has
4 no law in place to restrict sex-selection abor-
5 tion, establishing the United States as affording
6 less protection from sex-based feticide than the
7 Republic of India or the People’s Republic of
8 China, whose recent practices of sex-selection
9 abortion were vehemently and repeatedly con-
10 demned by United States congressional resolu-
11 tions and by the United States’ Ambassador to
12 the Commission on the Status of Women. Pub-
13 lic statements from within the medical commu-
14 nity reveal that citizens of other countries come
15 to the United States for sex-selection proce-
16 dures that would be criminal in their country of
17 origin. Because the United States permits abor-
18 tion on the basis of sex, the United States may
19 effectively function as a “safe haven” for those
20 who seek to have American physicians do what
21 would otherwise be criminal in their home coun-
22 tries—a sex-selection abortion, most likely late-
23 term.

24 (K) The American medical community op-
25 poses sex-selection abortion. The American Col-

lege of Obstetricians and Gynecologists, commonly known as “ACOG”, stated in its February 2007 Ethics Committee Opinion, Number 360, that sex-selection is inappropriate for family planning purposes because sex-selection “ultimately supports sexist practices”. Likewise, the American Society for Reproductive Medicine has opined that sex-selection for family planning purposes is ethically problematic, inappropriate, and should be discouraged.

(L) Sex-selection abortion results in an unnatural sex-ratio imbalance. An unnatural sex-ratio imbalance is undesirable, due to the inability of the numerically predominant sex to find mates. Experts worldwide document that a significant sex-ratio imbalance in which males numerically predominate can be a cause of increased violence and militancy within a society. Likewise, an unnatural sex-ratio imbalance gives rise to the commoditization of humans in the form of human trafficking, and a consequent increase in kidnapping and other violent crime.

(M) Sex-selection abortions have the effect of diminishing the representation of women in

1 the American population, and therefore, the
2 American electorate.

3 (N) Sex-selection abortion reinforces sex
4 discrimination and has no place in a civilized
5 society.

6 (2) RACIAL DISCRIMINATION FINDINGS.—

7 (A) Minorities are a vital part of American
8 society and culture and possess the same funda-
9 mental human rights and civil rights as the ma-
10 jority.

11 (B) United States law prohibits the dis-
12 similar treatment of persons of different races
13 who are similarly situated. United States law
14 prohibits discrimination on the basis of race in
15 various contexts, including the provision of em-
16 ployment, education, housing, health insurance
17 coverage, and athletics.

18 (C) A “race-selection abortion” is an abor-
19 tion performed for purposes of eliminating an
20 unborn child because the child or a parent of
21 the child is of an undesired race. Race-selection
22 abortion is barbaric, and described by civil
23 rights advocates as an act of race-based vio-
24 lence, predicated on race discrimination. By
25 definition, race-selection abortions do not impli-

1 cate the health of mother of the unborn, but in-
2 stead are elective procedures motivated by race
3 bias.

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

6 (E) Race-selection abortions have the ef-
7 fect of diminishing the number of minorities in
8 the American population and therefore, the
9 American electorate.

10 (F) Race-selection abortion reinforces ra-
11 cial discrimination and has no place in a civ-
12 ilized society.

13 (3) GENERAL FINDINGS.—

14 (A) The history of the United States in-
15 cludes examples of both sex discrimination and
16 race discrimination. The people of the United
17 States ultimately responded in the strongest
18 possible legal terms by enacting constitutional
19 amendments correcting elements of such dis-
20 crimination. Women, once subjected to sex dis-
21 crimination that denied them the right to vote,
22 now have suffrage guaranteed by the 19th
23 amendment. African-Americans, once subjected
24 to race discrimination through slavery that de-
25 nied them equal protection of the laws, now

1 have that right guaranteed by the 14th amend-
2 ment. The elimination of discriminatory prac-
3 tices has been and is among the highest prior-
4 ities and greatest achievements of American
5 history.

6 (B) Implicitly approving the discriminatory
7 practices of sex-selection abortion and race-se-
8 lection abortion by choosing not to prohibit
9 them will reinforce these inherently discrimina-
10 tory practices, and evidence a failure to protect
11 a segment of certain unborn Americans because
12 those unborn are of a sex or racial makeup that
13 is disfavored. Sex-selection and race-selection
14 abortions trivialize the value of the unborn on
15 the basis of sex or race, reinforcing sex and
16 race discrimination, and coarsening society to
17 the humanity of all vulnerable and innocent
18 human life, making it increasingly difficult to
19 protect such life. Thus, Congress has a compel-
20 ling interest in acting—indeed it must act—to
21 prohibit sex-selection abortion and race-selec-
22 tion abortion.

23 (b) CONSTITUTIONAL AUTHORITY.—In accordance
24 with the above findings, Congress enacts the following
25 pursuant to Congress' power under section 2 of the 13th

1 amendment and section 5 of the 14th amendment to en-
2 force those amendments, including the prohibition on gov-
3 ernment action denying equal protection of the laws, and
4 the power to pass all legislation necessary and proper for
5 the carrying into execution of these powers.

6 **SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE**
7 **BASIS OF RACE OR SEX.**

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

11 **“§ 249. Discrimination against the unborn on the**
12 **basis of race or sex**

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

14 “(1) performs an abortion knowing that such
15 abortion is sought based on the sex, gender, color or
16 race of the child, or the race of a parent of that
17 child;

18 “(2) uses force or the threat of force to inten-
19 tionally injure or intimidate any person for the pur-
20 pose of coercing a sex-selection or race-selection
21 abortion; or

22 “(3) solicits or accepts funds for the purpose of
23 financing a sex-selection abortion or a race-selection
24 abortion;

1 or attempts to do so, shall be fined under this title or im-
2 prisoned not more than 5 years, or both.

3 “(b) CIVIL REMEDIES.—

4 “(1) INJUNCTIVE RELIEF.—The Attorney Gen-
5 eral may in a civil action obtain appropriate prospec-
6 tive injunctive relief to enjoin a violation of sub-
7 section (a).

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

12 “(3) PRIVATE CAUSE OF ACTION.—The father,
13 if married to the mother at the time she receives a
14 sex-selection abortion or a race-selection abortion,
15 or, if the mother has not attained the age of 18
16 years at the time of the abortion, the maternal
17 grandparents of the unborn, may on behalf of the
18 unborn in a civil action obtain appropriate relief
19 with respect to a violation of subsection (a). The
20 court may award a reasonable attorney’s fee as part
21 of the costs in an action under this paragraph. Ap-
22 propriate relief includes money damages for all inju-
23 ries (whether psychological, physical, or financial, in-
24 cluding loss of companionship and support) occa-
25 sioned by the violation.

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

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

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

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

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

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

5 “(3) remove an ectopic pregnancy.”.

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

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

10 **SEC. 4. SEVERABILITY.**

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

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