

# RACE AND SEX SELECTIVE ABORTION BANS: WOLVES IN SHEEP'S CLOTHING

★ NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM ★

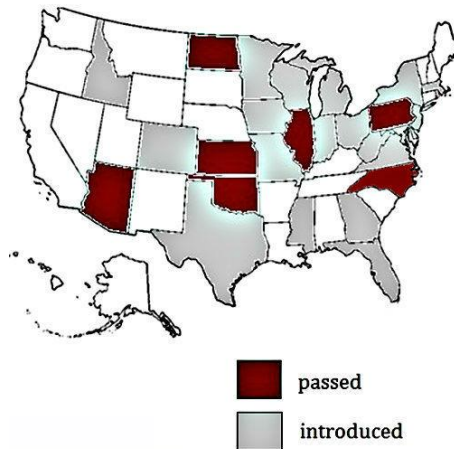
↪ Updated July 2013 ↪

Since 2009, over 60 bills have been introduced at the federal and state levels that would ban abortions performed on the basis of race or sex. Doctors who perform such a procedure could face jail time, fines, or lawsuits from a patient or her family. In most states, if a doctor or nurse suspects a patient is seeking a race- or sex-selective abortion, they are required to report her to authorities. This issue brief will summarize the state of the law, how these bans harm women of color, relevant statistics in the U.S., and emerging legislative trends.

## STATE AND FEDERAL LANDSCAPE

Today, seven states<sup>1</sup> have sex-selective abortion bans, and one<sup>2</sup> of these states also bans race-selective abortions. Before the year 2010, only two states banned sex-selective abortions: an Illinois ban passed in 1975 and a Pennsylvania ban passed in 1982.<sup>3</sup>

Since the ban was first introduced in the House in 2008,<sup>4</sup> a legislative trend emerged. Today, in addition to Illinois and Pennsylvania, Oklahoma, Kansas, North Carolina, North Dakota have passed sex-selective abortion bans, and Arizona has the country's only race- and sex-selective abortion ban.<sup>5</sup> The number of bans being introduced is on the rise. In 2009, nine state bills were<sup>6</sup> introduced to ban sex-selective abortion. In the first six months of 2013 alone, twenty one state bills were introduced.<sup>7</sup>



In May of 2013, a lawsuit against Arizona's ban was brought by the American Civil Liberties Union (ACLU) on behalf of NAPAWF and the National Association for the Advancement of Colored People (NAACP) for Maricopa County, challenging the law for being unconstitutionally discriminatory against Black and Asian American women.<sup>8</sup>

At the federal level, the ban was proposed for the first time in 2008

by Rep. Trent Franks (R-AZ). It was called the "Susan B. Anthony Prenatal Nondiscrimination Act" and failed to move very far. It was reintroduced in 2009 as the "Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act," and died in committee.<sup>9</sup>

In 2011, Franks introduced the bill a third time. During the 2011 House debate over this ban, NAPAWF Executive Director Miriam Yeung testified against it before the House Judiciary Committee Subcommittee on the Constitution.<sup>10</sup> She was the only witness allowed to testify against the bill. After protest from subcommittee Democrats, the bill name was changed to the "Prenatal Nondiscrimination Act" and, during the committee process, the race piece of the bill was dropped. In May of 2012, a vote was called under a

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suspension of the rules, and the ban failed to pass. Franks again reintroduced his ban in the House on February 1, 2013,<sup>11</sup> including both the race- and sex-selective pieces.<sup>12</sup>

On January 24, 2013, Senator Vitter (R-LA) introduced a sex-selective abortion ban in the Senate.<sup>13</sup> In 2013, Senator Vitter also attempted to include a Sense of the Senate in Congressional budget legislation, which would have stated the Senate's opposition to sex-selective abortion and intent to remedy it.<sup>14</sup>

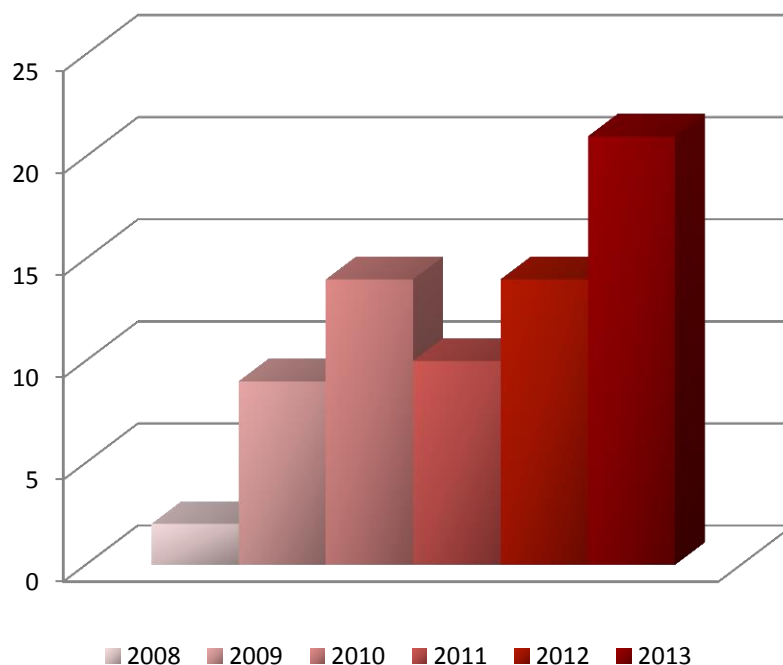
### IMPACT ON WOMEN OF COLOR

No woman should ever be scrutinized based on her racial or ethnic background, but this is exactly what these bans encourage.

Race- and sex-selective abortion bans further stigmatize women of color. Race-selective abortion bans target Black women and suggest that they are not capable of responsibly making their own reproductive health decisions and are complicit in so-called "Black genocide."<sup>15</sup> Sex-selective abortion bans perpetuate negative stereotypes about Asian American women and the broader Asian American community,<sup>16</sup> as well as anti-immigrant sentiment.

Further, these bans are detrimental to the reproductive health of Black and Asian American women. Out of fear of civil or criminal penalties, doctors could interrogate their motives. No woman should ever be scrutinized based on her racial or ethnic background, but this is exactly

Number of bans introduced by states



what these bans encourage. Trust is an essential element of health care and these bans violate that trust by turning a doctor into an interrogator of any woman seeking an abortion, especially women of color.

For a woman with a language barrier, a simple misunderstanding could result in denial of care. Thus, threatening providers with criminal and civil penalties could decrease the availability of services for communities that are already underserved.

Moreover, banning abortions does nothing to address the root causes of racism or sexism. NAPAWF believes that the focus of this work should be on changing the social norms and culture that perpetuate systemic racism and son preference while fighting for policies that promote gender and race equity. Rather than limit access to safe reproductive health care, lawmakers need to

support policies that have been shown to decrease discrimination and improve the social standing of girls. These include improved education, health care, pay equity, and freedom from violence. This approach would eliminate pressures that encourage son preference, which can result in sex selection.<sup>17</sup>

Many of the proposed laws disingenuously invoke language supporting civil and women's rights. However, legislators supporting these laws often have legislative histories that are hostile towards women's rights, abortion, health care access, and civil rights.<sup>18</sup> It is critical that we interrogate the voting records of these self-appointed champions of civil rights and gender justice in order to uncover their true motives.

## **ARE RACE- AND SEX- SELECTION REAL CONCERNS?**

“Race-selection” is not something that is happening widely in the United States. Debunking the race-selective abortion myth requires having a complete understanding of the data used to support it. While Black women do choose to have abortions more often than other women, it is not because of a racist agenda on the part of abortion providers, but because Black women have historically suffered from substandard health care, family planning, and education—all of which contribute to unintended pregnancies.<sup>19</sup>

Two studies relying on 2000 Census data confirm the existence of skewed

NAPAWF believes the focus of this work should be on changing the social norms and culture that perpetuate son preference, while fighting for policies that promote gender and race equity.

sex ratios in certain populations in the United States.<sup>20, 21</sup> These studies suggest that sex selection in favor of choosing boys is being exercised by certain Asian American communities in the U.S., particularly among Indian-, Chinese- and Korean-American parents.<sup>22</sup>

This is most apparent for second and third children in these families when the first child was female.<sup>23</sup> It is believed, but not confirmed through research, that skewed sex ratios in these Asian communities in the United States stem from the same reasons for the predominance of sex-selection in India, China, and South

Korea: cultural norms such as the elevated social status of men, the ability of sons to carry on the family name and perform certain cultural rituals, men’s ability to contribute more to family income, and traditions that require sons to care for aging parents.<sup>24</sup>

NAPAWF has long held that son preference, which can result in sex-selection, is an issue, but that abortion bans are not the solution. Instead, we are working to change the social norms and culture that cause some families to prefer sons over daughters.

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## **EMERGING LEGISLATIVE TRENDS**

Anti-abortion advocates continue to target abortion providers. The race- and sex-selective abortion bills ban three things: providing an abortion if the provider knows the abortion is sought based on the sex or race of the fetus or prospective parent; the use or threat of force to coerce a sex-selective or race-selective abortion; and soliciting or accepting funds for the purpose of financing a sex- or race-selective abortion.<sup>25</sup>

Many of the bills provide civil remedies for parties presumed to be affected by a sex-selective abortion and include clauses releasing the pregnant woman from civil or criminal liability.<sup>26</sup>

Though advocates believed in 2012

that the race-selective piece of these abortion bans would no longer be included, some proposals do still include race. Additionally, a growing number of laws and proposed bans would also outlaw abortions motivated by genetic abnormality. Of the twenty one bills introduced in the last six months, one new law in North Dakota and two proposed bills do this.<sup>27</sup> The North Dakota ban, signed into law on March 26, 2013, states that abortions performed “solely on account of the sex of the unborn child; or because the unborn child has been diagnosed with either a genetic abnormality or a potential genetic abnormality” would be outlawed.<sup>28</sup>

Additionally, there may be a trend toward expanding who can be prosecuted under these bans. Many

of the bills establish a duty on behalf of a variety of medical professionals.<sup>29</sup> A recent bill in Florida would have criminalized not only those who perform abortions, but also anyone who “induces” or “actively participates” in the termination of pregnancy, without specifying whether that could extend to administrative staff and other persons who are not medical professionals.<sup>30</sup>

## **LOOKING AHEAD**

Anti-choice legislators have made it clear that they are using sex selection as a potential wedge issue to divide progressive and social justice organizations, as well as to advance the anti-choice movement’s overall strategy to chip away at *Roe v. Wade*.<sup>31</sup> These bans have been

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carefully crafted by their supporters to split our movements—driving a wedge between communities of color and mainstream pro-choice groups by pitting purported “anti-racism” efforts against abortion rights. Maintaining unified opposition to these attacks requires advocates to address internal conflicts around sexism and racism.

Moving forward, partnerships between NAPAWF and reproductive rights and health organizations will

be crucial for creating credible responses to policies seeking to divide communities and allies, and will support the development of more effective responses to the underlying systemic gender inequalities that drive sex selection.

Lastly, NAPAWF is critical of the framework perpetuated by supporters of these types of abortion bans that delinks sex and race. The notion of a “race-selection” abortion is inextricably linked to gender, just

as son preference is inextricably linked to race.

NAPAWF insists that one’s lived experiences — including their gender, race, class, sexuality, culture, and other factors — must be taken into account in their totality, because forms of oppression are interwoven and cannot be tackled individually. Refusing to neatly parse identities is a powerful tool in crafting an opposition strategy to these types of bans.

<sup>1</sup> 720 ILL. COMP. STAT. 540/6 (1975); 18 PA. CONS. STAT. ANN. § 3204 (West 1982); OKLA. STAT. tit. §63-1-731.2 (2010); N.D. CENT. CODE § 14-02.1 (2013); S.B. 141, 2013 Leg., (Kan. 2013); ARIZ. REV. STAT. ANN. §§ 13-3603.02, 36-2157 (2011).

<sup>2</sup> ARIZ. REV. STAT. ANN. §§ 13-3603.02, 36-2157 (2011).

<sup>3</sup> Sujatha Jesudason & Susannah Baruch, *Race and Sex in Abortion Debates: The Legislation and the Billboards*, GENERATIONS AHEAD, 1, available at <http://www.generations-ahead.org/files-for-download/success-stories/RaceAndSexSelection.pdf>.

<sup>4</sup> Susan B. Anthony Prenatal Nondiscrimination Act of 2009, H.R. 1822, 111th Cong. (2009); Susan B. Anthony Prenatal Nondiscrimination Act of 2008, H.R. 7016, 110th Cong. (2008). H.R. 1822, Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2009. H.R. 1822 was referred to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties on April 27, 2009, where it died. H.R. 7016 died in 2008.

<sup>5</sup> *supra* note 3.

<sup>6</sup> H.B. 1595, 52nd Leg., 1st Sess. (Okla. 2009); S.F. 1073, 86th Leg. (Minn. 2009); H.F. 1196, 86th Leg. (Minn. 2009); S.B. 799, 95th Leg. (Mich. 2009); H.B. 5125, 95th Leg. (Mich. 2009). Each introduced legislation that would ban sex selection abortions in 2009. Oklahoma’s sex selection abortion ban was ruled unconstitutional in February 2010 as it violated Oklahoma’s single-subject rule. See *Nova Health Systems v. Edmonson*, 233 P.3d 380, 382 (Okla. 2010).

<sup>7</sup> H.B. 1305, 63<sup>rd</sup> leg., (N.D. 2013); H.B. 309, 83<sup>rd</sup> Leg., (Tex. 2013); A.B. 217, 2013 Leg.; (Wis. 2013); H. 716, 2013-2014 Leg., (N.C. 2013); S.B. 1072 and CS/HB 845, 2013-2013 Leg., (Fla. 2013); H.B. 2371 and S.B. 43, 81<sup>st</sup> Leg., (W.Va. 2013); H.B. 2253 and S.B.141., 2013-2014 Sess., (Kan. 2013); A. 2157, 2012-2013 Sess., (N.J., 2013); H.B. 386, 97<sup>th</sup> Gen. Assemb., (Mo. 2013); H. 1567, 188<sup>th</sup> Leg., (Mass. 2013); H.B. 1430 and S.B. 0183, 118<sup>th</sup> Gen. Assemb., (Idaho 2013); H.B. 13-1131 and S.B. 13-056, 69<sup>th</sup> Gen. Assemb., (Colo. 2013); S.F. 13, 2012, 86<sup>th</sup> Gen. Assemb., (Iowa 2013); A. 02533 and S. 02286, 2013-2014 Gen. Assemb., (N.Y. 2013); HB 1316, 2013 Sess., (Va. 2013).

<sup>8</sup> Press Release, NAT’L ASIAN PAC. AM. WOMEN’S F., *Asian Women advocates join ACLU, NAACP to challenge AZ abortion restriction* (May 29, 2013).

<sup>9</sup> H.R. 1822, 111th Cong. (2009).

<sup>10</sup> Congressional Subcommittee Hearing on H.R. 3541 Before the H. Jud. Subcomm. <http://vimeo.com/user9585252/prenda-hearing>

<sup>11</sup> Prenatal Nondiscrimination Act (PRENDA) of 2013, H.R. 447, 113th Cong. (2013).

<sup>12</sup> *Id.*

<sup>13</sup> Prenatal Nondiscrimination Act (PRENDA) of 2013, S. 138, 113th Cong. (2013).

<sup>14</sup> Suzy Khimm, *Here’s the insanely long list of amendments filed to the Senate budget*, WASH. POST, (Mar. 23, 2012, 3:26 PM), available at <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/03/23/heres-the-insanely-long-list-of-amendments-filed-to-the-senate-budget/>

<sup>15</sup> Kathryn Joyce, *Is Abortion “Black Genocide,”* 8, 8 (Loretta Ross ed., 1990), available at [http://www.sistersong.net/documents/CollectiveVoices\\_Summer2011\\_rf2.pdf](http://www.sistersong.net/documents/CollectiveVoices_Summer2011_rf2.pdf).

<sup>16</sup> Miriam Yeung, “PRENDA the Pretenda:” H.R. 3541 Is An Attack on Asian American Women, and We Know It, RH REALITY CHECK (May 29, 2012, 7:07 AM), <http://rhrefactcheck.org/article/2012/05/29/prenda-pretenda-hr-3541-is-an-attack-on-asian-american-women-and-we-know-it/>.

<sup>17</sup> WORLD HEALTH ORG. [WHO], *Preventing gender-biased sex selection*, at 9 (2011), available at [http://whqlibdoc.who.int/publications/2011/9789241501460\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789241501460_eng.pdf).

<sup>18</sup> As an example, the voting record of Trent Franks on sexual orientation and gender identity, women’s issues, and abortion and reproductive health show how little he has in common with the progressive movement. *Representative Trent Franks’s Voting Records: Sexual Orientation and Gender Identity*, PROJECT VOTE SMART, <http://votesmart.org/candidate/key-votes/28399/trent-franks/76/sexual-orientation-and-gender-identity#.UctZffmqWU>; *Representative Trent Franks’s Voting Records: Women*, Project Vote Smart, [http://votesmart.org/candidate/key-votes/28399/trent-franks/68/women#.Uc2ht\\_mkqWV](http://votesmart.org/candidate/key-votes/28399/trent-franks/68/women#.Uc2ht_mkqWV); *Representative Trent Franks’s Voting Records: Abortion and Reproductive Rights*, Project Vote Smart, [http://votesmart.org/candidate/key-votes/28399/trent-franks/75/abortion-and-reproductive#.Uc2h\\_fmkgWU](http://votesmart.org/candidate/key-votes/28399/trent-franks/75/abortion-and-reproductive#.Uc2h_fmkgWU).

<sup>19</sup> Susan A. Cohen, *Abortion and Women of Color*, 11 GUTTMACHER POL’Y REV. 2, 4 (2008).

<sup>20</sup> Douglas Almond & Lena Edlund, *Son-biased sex Ratios in the 2000 U.S. Census*, 105 PROCEEDINGS OF THE NAT’L ACADEMY OF SCIENCES 5681 (2008).

<sup>21</sup> Jason Abrevaya, *Are there missing girls in the U.S.? Evidence from birth data*, 1 AMER. ECON. JOURNAL: APPLIED ECONOMICS 1, 15 (2009).

<sup>22</sup> Sneha Barot, *A Problem-and-Solution Mismatch: Son Preference and Sex-Selective Abortion Bans*, 15 GUTTMACHER POL’Y REV. 18, 18-19 (2012), available at <http://www.guttmacher.org/pubs/gpr/15/2/gpr150218.html>.

<sup>23</sup> *supra* note 17, at 2.

<sup>24</sup> *Id.* at 18.

<sup>25</sup> H.R. 447 §250(a), 113th Cong. (2013).

<sup>26</sup> H.R. 447 §250(c), 113th Cong. (2013); ARIZ. REV. STAT. ANN. § 13-3603.02(E) (2011).

<sup>27</sup> N.D. CENT. CODE § 14-02.1 (2013); H.B. 386, 97<sup>th</sup> Gen. Assemb., (Mo. 2013); S.B. 0183, 118<sup>th</sup> Gen. Assemb., (Idaho 2013).

<sup>28</sup> N.D. CENT. CODE § 14-02.1 (2013).

<sup>29</sup> H.R. 447 § 250(e), 113th Cong. (2013); ARIZ. REV. STAT. ANN. §13-3603.02(D) (2011).

<sup>30</sup> FLA. STAT. § 390.0111(10) (2013).

<sup>31</sup> Press Release, U.S. Congressman Trent Franks, *Speech for Cong. Rec. on 40<sup>th</sup> Anniversary of Roe v. Wade* (Jan. 22, 2013).