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. LIPIN-SKI, 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,

SECTION 1. SHORT TITLE.

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2	This Act may be cited as the "Susan B. Anthony and
3	Frederick Douglass Prenatal Nondiscrimination Act of
4	2011".
5	SEC 9 DINDINGS AND CONSTITUTIONAL AUTHODITY

SEC. 2. FINDINGS AND CONSTITUTIONAL AUTHORITY.

- (a) FINDINGS.—The Congress makes the following 6 7 findings:
 - (1) SEX DISCRIMINATION FINDINGS.—
 - (A) Women are a vital part of American society and culture and possess the same fundamental human rights and civil rights as men.
 - (B) United States law prohibits the dissimilar treatment of males and females who are similarly situated and prohibits sex discrimination in various contexts, including the provision of employment, education, housing, health insurance coverage, and athletics.
 - (C) Sex is an immutable characteristic ascertainable at the earliest stages of human development through existing medical technology and procedures commonly in use, including maternal-fetal bloodstream DNA sampling, amniocentesis, chorionic villus sampling or "CVS", and obstetric ultrasound. In addition to medically assisted sex-determination, a growing sex-determination niche industry has developed

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

(D) A "sex-selection abortion" is an abortion undertaken for purposes of eliminating an unborn child of an undesired sex. Sex-selection abortion is barbaric, and described by scholars and civil rights advocates as an act of sex-based or gender-based violence, predicated on sex discrimination. Sex-selection abortions are typically late-term abortions performed in the 2nd or 3rd trimester of pregnancy, after the unborn child has developed sufficiently to feel pain. Substantial medical evidence proves that an unborn child can experience pain at 20 weeks after conception, and perhaps substantially earlier. By definition, sex-selection abortions do not implicate the health of the mother of the

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unborn, but instead are elective procedures motivated by sex or gender bias.

> (E) The targeted victims of sex-selection abortions performed in the United States and worldwide are overwhelmingly female. The selective abortion of females is female infanticide, the intentional killing of unborn females, due to the preference for male offspring or "son preference". Son preference is reinforced by the low value associated, by some segments of the world community, with female offspring. Those segments tend to regard female offspring as financial burdens to a family over their lifetime due to their perceived inability to earn or provide financially for the family unit as can a male. In addition, due to social and legal convention, female offspring are less likely to carry on the family name. "Son preference" is one of the most evident manifestations of sex or gender discrimination in any society, undermining female equality, and fueling the elimination of females' right to exist in instances of sex-selection abortion.

> (F) Sex-selection abortions are not expressly prohibited by United States law or the

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laws of 47 States. Sex-selection abortions are performed in the United States. In a March 2008 report published in the Proceedings of the National Academy of Sciences, Columbia University economists Douglas Almond and Lena Edlund examined the sex ratio of United States-born children and found "evidence of sex selection, most likely at the prenatal stage". The data revealed obvious "son preference" in the form of unnatural sex-ratio imbalances within certain segments of the United States population, primarily those segments tracing their ethnic or cultural origins to countries where sex-selection abortion is prevalent. The evidence strongly suggests that some Americans are exercising sex-selection abortion practices within the United States consistent with discriminatory practices common to their country of origin, or the country to which they trace their ancestry. While sex-selection abortions are more common outside the United States, the evidence reveals that female feticide is also occurring in the United States.

(G) The American public supports a prohibition of sex-selection abortion. In a March

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

(H) Despite the failure of the United States to proscribe sex-selection abortion, the United States Congress has expressed repeatedly, through Congressional resolution, strong condemnation of policies promoting sex-selection abortion in the "Communist Government of China". Likewise, at the 2007 United Nation's Annual Meeting of the Commission on the Status of Women, 51st Session, the United States delegation spearheaded a resolution calling on countries to condemn 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

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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. Current 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 restrictions on sex-selection, and have steadily continued to strengthen prohibitions and penalties. The United States, by contrast, has no law in place to restrict sex-selection abortion, establishing the United States as affording less protection from sex-based feticide than the Republic of India or the People's Republic of China, whose recent practices of sex-selection abortion were vehemently and repeatedly condemned by United States congressional resolutions and by the United States Ambassador to the Commission on the Status of Women. Public statements from within the medical community reveal that citizens of other countries come to the United States for sex-selection procedures that

would be criminal in their country of origin. Because the United States permits abortion on the basis of sex, the United States may effectively function as a "safe haven" for those who seek to have American physicians do what would otherwise be criminal in their home countries—a sex-selection abortion, most likely late-term.

- (K) The American medical community opposes sex-selection abortion. The American College 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 the American population, and therefore, the American electorate.
- (N) Sex-selection abortion reinforces sex discrimination and has no place in a civilized society.

(2) Racial discrimination findings.—

- (A) Minorities are a vital part of American society and culture and possess the same fundamental human rights and civil rights as the majority.
- (B) United States law prohibits the dissimilar treatment of persons of different races who are similarly situated. United States law prohibits discrimination on the basis of race in various contexts, including the provision of em-

ployment, education, housing, health insurance coverage, and athletics.

- (C) A "race-selection abortion" is an abortion performed for purposes of eliminating an unborn child because the child or a parent of the child is of an undesired race. Race-selection abortion is barbaric, and described by civil rights advocates as an act of race-based violence, predicated on race discrimination. By definition, race-selection abortions do not implicate the health of mother of the unborn, but instead are elective procedures motivated by race bias.
- (D) Only one State, Arizona, has enacted law to proscribe the performance of race-selection abortions.
- (E) Race-selection abortions have the effect of diminishing the number of minorities in the American population and therefore, the American electorate.
- (F) Race-selection abortion reinforces racial discrimination and has no place in a civilized society.
- 24 (3) General findings.—

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(A) The history of the United States includes examples of both sex discrimination and race discrimination. The people of the United States ultimately responded in the strongest possible legal terms by enacting constitutional amendments correcting elements of such discrimination. Women, once subjected to sex discrimination that denied them the right to vote, now have suffrage guaranteed by the 19th amendment. African-Americans, once subjected to race discrimination through slavery that denied them equal protection of the laws, now have that right guaranteed by the 14th amendment. The elimination of discriminatory practices has been and is among the highest priorities and greatest achievements of American history.

(B) Implicitly approving the discriminatory practices of sex-selection abortion and race-selection abortion by choosing not to prohibit them will reinforce these inherently discriminatory practices, and evidence a failure to protect a segment of certain unborn Americans because those unborn are of a sex or racial makeup that 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 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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