



American Reports Series

Issue 11 | April 2016

Sex-Selection Abortion:

THE REAL WAR
ON WOMEN

Anna Higgins, J.D.

The Charlotte Lozier Institute's American Reports Series presents analysis of issues affecting the United States at the national level. These reports are intended to provide insight into various issues concerning life, science, and bioethics.

Previous Reports:

Byron Calhoun, M.D., *Perinatal Hospice: Allowing Parents to Be Parents*, American Reports Series 1.

Gene Tarne, *The Ethical Stems of Good Science*, American Reports Series 2.

Charles A. Donovan; Sullivan, Nora, *Abortion Reporting Laws: Tears in the Fabric*, American Reports Series 3.

Charles A. Donovan, *The Adoption Tax Credit: Progress and Prospects for Expansion*, American Reports Series 4.

Gene Tarne; Mullins, Andrew, *Maryland Joins the Trend for Ethical Stem Cell Research*, American Reports Series 5.

Angelina Baglini, *Gestational Limits on Abortion in the United States Compared to International Norms*, American Reports Series 6.

Gene Tarne, *Cloning is Cloning is Cloning*, American Reports Series 7.

Mark Bradford, *Improving Joyful Lives: Society's Response to Difference and Disability*, American Reports Series 8.

Wesley J. Smith, *Assisted Suicide Is Not Compassion*, American Reports Series 9.

Daniels, Scott E. *Health Care Sharing Ministries: An Uncommon Bond*, American Reports Series 10.

The full text of this publication can be found at: <https://lozierinstitute.org/sex-selection-abortion-the-real-war-on-women>

Comments and information requests can be directed to:

Charlotte Lozier Institute

1200 New Hampshire Ave., NW, Suite 750

Washington, DC 20036

E-mail: info@lozierinstitute.org

Ph. 202-223-8073/www.lozierinstitute.org

The views expressed in this paper are attributable to the author(s) and do not necessarily represent the position of the Charlotte Lozier Institute. Nothing in the content of this paper is intended to support or oppose the progress of any bill before the U.S. Congress.

Introduction

Despite advances in civil rights and the recognition by most developed nations that discrimination on the basis of sex alone is inherently unjust, a very real and pervasive form of sex discrimination is still permitted and practiced in the world today. Prenatal sex discrimination crosses cultural, ethnic, and national lines. It is practiced with impunity in many countries, including the U.S., via sex-selective abortion – choosing to abort a preborn child based solely on the child’s sex. Prenatal discrimination can also be practiced pre-implantation by destroying embryos based on a pre-implantation sex determination. Undoubtedly, such practices constitute discrimination against a unique human individual based on sex alone, and thus constitute sex discrimination. In order to address this injustice, it is imperative that States and the Federal Government institute selection abortion bans – restrictions on abortions done for reasons of sex selection alone.

The Real “War on Women”

Sex-selective abortion is a well-known problem in China and India, where a cultural preference for sons, coupled with political and economic influences, has severely skewed sex ratios at birth (SRBs). Instances of sex discrimination perpetrated via abortion and infanticide are well documented and have resulted in millions of “missing” girls in some societies.¹ In China, for example, men outnumber women to the tune of 33 million.² “More than 20 years ago, Amartya Sen (1990) documented that 100 million girls and women were “missing” from the global population as a consequence of neglect, infanticide, and inequalities in care. The figure is now estimated to be in excess of 160 million, with sex-selective abortion playing a major role (Hvistendahl 2011).”³ Such practices constitute a real “war on women” and have been widely condemned.⁴ Those who claim to be concerned

¹ Hvistendahl, M. (2011) *Unnatural Selection: Choosing Boys over Girls, and the Consequences of a World Full of Men*, Public Affairs Publishing, p. 5-6. Hvistendahl estimates that 163 million females were demographically “missing” from Asia alone as early as 2005. See also, It’s a girl, <http://www.itsagirlmovie.com/>; *The Economist*. The War on Baby Girls, Gendercide. March 4, 2010. <http://www.economist.com/node/15606229>; United Nations Population Fund, Prenatal Sex Selection. <http://www.unfpa.org/prenatal-sex-selection#sthash.IGF4HN5f.dpuf>.

² Littlejohn, R., Women’s Rights Without Frontiers. (2015, April 9). *Chinese Men Outnumber Women by 33 Million After Decades of Gender Bias*. Retrieved from <http://www.womensrightswithoutfrontiers.org/blog/?p=1969>

³ A.R. Chapman, P.A. Benn (Autumn 2013). Noninvasive Prenatal Testing for Early Sex Identification: A Few Benefits and Many Concerns. *Perspectives in Biology and Medicine*, VOL. 56 NO. 4, pp. 530-547. Johns Hopkins University Press. DOI: 10.1353/pbm.2013.0034.

⁴ Draft Agreed Conclusions on the Elimination of All Forms of Discrimination and Violence Against the Girl Child, Commission on the Status of Women, 51st Session (26 February - 9 March 2007) resolving that we should, “Eliminate all forms of discrimination against the girl child and the root causes of son preference, which results in harmful and unethical practices regarding female infanticide and prenatal sex selection, which may have significant repercussions on society as a whole.” Retrieved from http://www.unwomen.org/~media/headquarters/attachments/sections/csw/51/csw51_e_final.pdf; See also, American College of Obstetricians and Gynecologists, Committee on Ethics Committee Opinion. (2007 February). *Sex Selection*. (Number 360), 2. Noting, “Although health care providers may not ethically withhold medical

with women’s rights can no longer ignore the need to ban sex-selective abortion in order to protect girls from “gendercide.”

Prenatal Sex Discrimination

Research and personal testimony show that the practice of sex-selective abortion is prevalent across cultures and nations, including the United States.⁵ Sex selection in favor of males is practiced in some Asian immigrant communities within the U.S. and other western nations such as the United Kingdom. Current research shows that just a generation ago, sex ratios at birth within certain ethnic communities (specifically “Asian-Pacific”) in the U.S. and UK were within the normal range. Within the last twenty years, the ratio has climbed sharply, resulting in highly unbalanced ratios in favor of males. Such a noticeable change in recent decades implicates the increased use of sex selective abortion.⁶

Sex ratios in the U.S. remain fairly balanced overall. Such a balance is not evidence of the lack of gender discrimination in the U.S., rather, it is an indication of a unique set of ethical dilemmas in the U.S. related to sex selection. Advanced medical technologies traditionally used to diagnose disease – preimplantation genetic diagnosis and noninvasive prenatal testing - are gaining popularity as tools to be used in selecting the sex of offspring. Such methods are generally used for “family balancing” by couples who have a child or children of one sex and desire a child of the other sex.⁷ Currently, there is no prohibition on such technology for the purpose of sex selection in the United States. Such technology can easily be used to discriminate against either sex, which is no less ethically problematic.

information from patients who request it, they are not obligated to perform an abortion, or other medical procedure, to select fetal sex.” Retrieved from <http://www.acog.org/~media/Committee%20Opinions/Committee%20on%20Ethics/co360.ashx?dmc=1&ts=20111203T1536377176>

⁵ Gendercide in the Caucasus, Son-preference, once suppressed, is reviving alarmingly. (2013, September 21). *The Economist*. Retrieved from <http://www.economist.com/news/europe/21586617-son-preference-once-suppressed-reviving-alarmingly-gendercide-caucasus>; Almond, D., & Edlund, L. (2008). *Son-Biased Sex Ratios in the 2000 United States Census*. Retrieved from www.pnas.org/cgi/doi/10.1073/pnas.0800703105 doi: 105 PNAS 5681; Live Action, <http://liveaction.org/gendercide>; Nicholas Eberstadt, "The Global War Against Baby Girls," *The New Atlantis*, Number 33, Fall 2011, pp. 3-1

⁶ Nicholas Eberstadt, "The Global War Against Baby Girls," *The New Atlantis*, Number 33, Fall 2011, pp. 3-18. Noting, “In both the United States and the United Kingdom, these gender disparities were due largely to sharp increases in higher-parity SRBs, strongly suggesting that sex-selective abortions were the driver. The American and British cases also point to the possibility that sex-selective abortion may be common to other subpopulations in developed or less developed societies, even if these do not affect the overall SRB for each country as a whole.” Retrieved from <http://www.thenewatlantis.com/publications/the-global-war-against-baby-girls>.

⁷ A.R. Chapman, P.A. Benn (Autumn 2013). Noninvasive Prenatal Testing for Early Sex Identification: A Few Benefits and Many Concerns. *Perspectives in Biology and Medicine*, VOL. 56 NO. 4, pp. 530-547. Johns Hopkins University Press. DOI: 10.1353/pbm.2013.0034

The Unavoidable Question

The glaring policy question and moral dilemma we face when deciding whether or not to implement restrictions on prenatal sex discrimination practices is whether sex-discrimination should be permitted in any form, whether it affects one or one million lives. As Dr. David Prentice, Vice President and Research Director, Charlotte Lozier Institute, recently noted in testimony before the Indiana Senate Committee on Health and Provider Services, “Some opponents of prohibitions against sex-selection abortions state that such abortions are rare, but that is a tacit admission that some sex-selection abortions occur. Even one gender discrimination abortion is too many.”⁸ The authors of a recent paper highlighting the growing problem of sex selection in the U.S. via noninvasive prenatal testing procedures agree with this assessment, noting, “We believe that aborting a healthy fetus solely on the basis of its sex for purposes of family balancing is a dubious practice and ethically objectionable... .”⁹ As discussed in the next section, the American public overwhelmingly supports these conclusions.

Popular Opposition to Sex-Selective Abortion

Americans, as well as citizens of the United Kingdom, overwhelmingly oppose abortions performed for reasons of sex selection. A poll conducted by the Charlotte Lozier Institute in 2012¹⁰ found that 77% of respondents opposed abortion in instances of sex selection (specifically abortion of girls). These results reflect the long-held legal traditions and mores of Americans in support of individual equality without respect to race, ethnicity, or sex.

A 2014 poll from the United Kingdom found that “80% of British adults agreed that ‘where it can be proved that an abortion was authorized on grounds of the baby’s gender, the doctor authorizing that abortion should be prosecuted.’” “The poll, carried out by ComRes, also found that more than four in five adults (84%) agree that ‘aborting babies

⁸ D Prentice. (2015, Feb 18). Written Testimony of David A. Prentice, Ph.D. In Support of Indiana’s SB 334. Retrieved from <https://lozierinstitute.org/wp-content/uploads/2015/02/Prentice-Senatetestimony-SB334-IN-Final.pdf>

⁹ A.R. Chapman, P.A. Benn (Autumn 2013). Noninvasive Prenatal Testing for Early Sex Identification: A Few Benefits and Many Concerns. *Perspectives in Biology and Medicine*, VOL. 56 NO. 4, pp. 530-547. Johns Hopkins University Press. DOI: 10.1353/pbm.2013.0034

¹⁰ Charlotte Lozier Institute, Sex-selection Abortion: Worldwide Son-bias Fueled by Population Policy Abuse, May 30, 2012. <https://lozierinstitute.org/poll-77-americans-support-ban-sex-selective-abortion/>. Noting that, “The CLI poll of 1,016 U.S. adults found that, overall, 77 percent of respondents answered ‘yes’ when asked, “When the fact that the developing baby is a girl is the sole reason for seeking an abortion, do you believe that abortion should be illegal?” Only 16 percent of all respondents said that abortion should be legal in this circumstance. Among women, support for a law making sex-selection abortion illegal is higher (80-13 percent) than it is among men, who favor such a law by a margin of 74-18 percent. Support for a protective law is found among all age groups, but is highest among those age 45-54 where a ban is supported 87-11 percent. By region, support for a ban ranges from a high of 81 percent in the Midwest and South to 68 percent in the West.”

because of their gender should explicitly be banned by law.”¹¹

American, British, and German citizens are similarly opposed to using Preimplantation Genetic Diagnosis (PGD, also called Preimplantation Genetic Screening, PGS) technology for nonmedical reasons such as sex selection and selection of physical and/or personality traits of offspring. According to the Ethics Committee of the American Society for Reproductive Medicine, “A survey of public attitudes found that 68% of Americans disapprove of the use of PGS for sex selection only. A recent review article cites a German study finding that only 8% approved of the use of PGS for nonmedical reasons. In the United Kingdom, public opposition to sex selection has also been cited to override claims to reproductive autonomy.”¹²

It is a dereliction of duty for representatives in a democratic society to be silent on an issue that is of such grave concern to constituents. Although sex ratio numbers do not reveal the entire story of the complicated issues related to the use and ethics of sex selection, demographic data is often used by politicians and opponents of sex-selective abortion bans to make the claim that such bans are unnecessary, thereby avoiding the responsibility to act on the obvious injustice of sex-selective abortion. Additionally, there are no national mandatory reporting requirements for abortion data in the U.S., making it impossible to ascertain the true extent of the scope of sex-selective abortion nationally. The ideals of liberty and the desire of the American public to put an end to sex discrimination in the form of sex-selective abortion should transcend party lines.

The Data Dilemma

In countries where males vastly outnumber females, sex-selection via abortion is an obvious culprit. In the U.S., however, where the sex ratio at birth is statistically average (about 105 males for every 100 females), it becomes more difficult to ascertain the number of gender-selective abortions that are performed based on birth data alone. In order to determine a more specific number, studies of induced abortion data become imperative. The sex ratio at conception and birth remains almost 50:50 (with a slight male-bias) without regard to race or maternal age.¹³ Because this number is so reliable, an analysis of induced abortions in the U.S. should shed light on whether or not a bias exists. However,

¹¹ LifeNews.com (November 3, 2014). Poll Shows Overwhelming Support for Sex Selection Abortion Ban in UK. <http://www.lifenews.com/2014/11/03/poll-shows-overwhelming-support-for-sex-selection-abortion-ban-in-uk/>; Christian Concern (November 3, 2014). New Poll Reveals Overwhelming Public Support for Ban on Gender Abortion. <http://www.christianconcern.com/our-concerns/abortion/new-poll-reveals-overwhelming-public-support-for-ban-on-gender-abortion>

¹² ETHICS PAPER FROM AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE (ASRM) ASRM Pages, VOL. 103 NO. 6, June 2015, pp 1418-22. Ethics Committee of ASRM, ASRM, Birmingham, AL. “Use of reproductive technology for sex selection for nonmedical reasons.”

¹³ 9 Orzack SH, et al. (2015). The human sex ratio from conception to birth. Proc Natl Acad Sci USA, 10.1073/pnas.1416546112

the abysmal state of abortion data in the U.S. prevents us from making such an important determination.

As Charles Donovan and Nora Sullivan of the Charlotte Lozier Institute (CLI) pointed out in 2012, induced abortion reporting is not mandatory in the United States, thus, it cannot accurately inform the national policy discussion on abortion procedure reform.

National and state abortion reporting laws and policies in the United States are a patchwork that falls far short of fulfilling the potential of this information to inform and guide public policy. The composite picture they reveal is at once impressionistic and incomplete, non-contemporaneous and of limited use in providing a true and timely rendering of the impact of public policies and attitudes on the reality of abortion in the United States.¹⁴

Additionally, as Clarke Forsythe of Americans United for Life elaborated,

The U.S. abortion data and reporting system, unlike many other countries, relies completely on voluntary reporting. No federal law requires the reporting of abortion numbers, complications or deaths. (Denmark, in contrast, requires mandatory reporting by providers of all induced abortions.) Even the most basic statistics about abortion — for example, the annual number in the United States provided by the CDC — is based entirely on estimates, and is therefore vulnerable to human error. How reliable can the annual number of abortions be if California, which used to report approximately one-quarter of all abortions across the nation annually, hasn't reported its data to the CDC for several years?¹⁵

Donovan and Sullivan go on to emphasize not only the necessity of obtaining more complete records, but also the relative ease with which it could be accomplished in this tech-savvy age:

In this era of Internet technology and nearly instant reporting of all sorts of data, this patchwork need not be the rule, nor need policymakers accept such incomplete information as a given. ... Getting current and unfiltered information and having the advantage of multiple interpretations of its meaning should be a topic of the highest priority for state and federal attention. Moreover, in the age of the Internet, neither gathering nor

¹⁴ Donovan, C. A., & Sullivan, N. (2012 December 1). Charlotte Lozier Institute. American Reports Series *Abortion Reporting Laws: Tears in the Fabric* Retrieved from <https://www.lozierinstitute.org/abortionreporting/>

¹⁵ Forsythe, C. D., & Thorp, J. M. The Unhealthy State of Abortion Statistics. (2015, March 26). Retrieved from <http://www.washingtontimes.com/news/2015/mar/26/john-thorp-clark-forsythe-inaccurate-abortion-stat/#ixzz3XhosrgcF>

*disseminating useful, current, and patient-protective cumulative data need be a costly enterprise.*¹⁶

If researchers and policy-makers are truly interested in obtaining more accurate numbers of abortions done for reasons of sex selection in the U.S., then rather than deny the need for bans on sex-selective abortion in the U.S., they would do well to make an effort to push for mandatory reporting of abortion data.

A Legal Perspective

The laws and policies we institute – or fail to institute – inform and educate our citizens about acceptable and ethical practices in society. Who would dispute, for example, that the Supreme Court decision in *Plessy v. Ferguson* (1896)¹⁷ and “Jim Crow” laws shaped attitudes about racial segregation and discrimination? Those laws needed to change.

Just as with how our law now treats race discrimination, sex discrimination is likewise taken seriously in American jurisprudence because of our commitment to basic moral values involving human dignity. Sex discrimination violates a fundamental liberty guaranteed by the Constitution – equal protection under the law. The equal protection standard is applicable to gender-based classifications and “require[s] ‘an exceedingly persuasive justification’ in order to survive constitutional scrutiny.”¹⁸ Sex discrimination is also prohibited by Title VII of the Civil Rights Act of 1964,¹⁹ which addresses discriminatory employment practices, prohibits employment discrimination on the basis of sex, race, color, religion, or national origin.²⁰

Opponents of sex-selective bans often assert that “sex selection” of a preborn child falls under laws protecting reproductive autonomy. However, the prohibition of sex-selective abortion is not a question that has been addressed by any U.S. court, thus, it is an

¹⁶ Id. Donovan, C. A., & Sullivan, N. Citing Minnesota as an example of a state that has a cost-effective, efficient reporting method.

¹⁷ *Plessy v. Ferguson* 163 U.S. 537 at 544 (1896). The Court in *Plessy* validated “separate but equal” state laws noting that the Fourteenth Amendment “could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power.”

¹⁸ *J. E. B. v. Alabama ex rel. T. B.* 511 U.S. 127 at 136 (1994).

¹⁹ Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964), “An Act: To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.”

²⁰ Id. at Title VII, making it unlawful to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”

issue of first impression. And there are reasons to think the Supreme Court might uphold a ban on sex-selection abortion.

First, the current standard applied to abortion regulation by the Court is that a state may not place a substantial obstacle in the path of a woman seeking an abortion prior to viability. Sex-selection bans do not violate that standard. A ban on sex-selective abortion is, for the state, an expression of respect for life and a mechanism by which it can protect a person from sex discrimination. Additionally, if a ban on sex-selective abortion were put in place, an almost innumerable list of other reasons/options for a woman to choose elective abortion remains available—including the reason that the woman simply doesn't want to be pregnant whether or not the pregnancy was intended in the first place. When such myriad options exist, reasoning that a ban on a single discriminatory reason constitutes a "substantial obstacle" collapses.

This argument is strengthened by reference to *Gonzales v. Carhart* where the Supreme Court upheld a total ban on partial-birth abortion, even when it is performed prior to viability.²¹ The Court noted that because there was one alternative procedure to the procedure that was banned by the Partial Birth Abortion Ban Act, the undue burden standard was not met. In the case of bans on sex-selective abortion, not only one, but many other avenues exist by which a woman is able to procure an elective abortion. Thus, a ban not only fails to meet the undue burden requirement, it also serves the important interest of the state in expressing its profound respect for life.

Second, the abortion right is balanced in light of the legitimate state interest in protecting the health of the mother and life of the fetus from the outset of pregnancy.²² The state's interest in regulation was highlighted in *Gonzales v. Carhart*: "[r]egulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose."²³ Sex-selective bans not only prohibit discrimination against a person based on sex – a compelling governmental interest – they also protect the pregnant woman from cultural or familial pressure to have an abortion by penalizing such coercion.²⁴

²¹ *Gonzales v. Carhart*, 550 U.S. 124 (2008).

²² *Planned Parenthood of Southeastern Pennsylvania v. Casey* 505 U.S. 833 at 846 (1992).

²³ *Gonzales* at 16.

²⁴ See also, Testimony of Steven H. Aden, Vice President/Senior Counsel, Human Life Issues, *Alliance Defense Fund*. Hearing of the House Judiciary Committee, Subcommittee on the Constitution Regarding H.R. 3541, the Prenatal Nondiscrimination Act. (2011 December 6). Testifying that "[T]he Supreme Court has made it clear that States have a compelling interest in eliminating discrimination against women and minorities. Moreover, the *Casey* Court also affirmed the principle that "the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus..." [punctuation is off here – quotation marks]

Third, and on top of all this, construing the abortion right to include sex-discrimination abortion would take the Court and the country in the wrong direction. Aborting a child for reasons of sex alone is not an exercise of reproductive autonomy, but rather one of discrimination based on immutable characteristics. The real issue when it comes to aborting a child based on sex alone, as articulated by Barbara Katz Rothman in her book on prenatal diagnosis, is not *whether* or not to have a child, but rather, *what kind* of child to have.²⁵ The abortion right should not include the right “to bear or abort a *particular* child” based on particular traits such as gender.²⁶

A Moral Responsibility to Act

The United States has a moral duty as one of the world’s most influential free societies to lead the way in protecting girls and boys from all forms of gender discrimination, even if the U.S. never sees “gendercide” on the scale of practices in India and China. The U.S. should be even more inclined to act as the problem of imbalanced sex ratios grows globally. Alarming disparate ratios exist in a number of nations outside of Asia. Highly skewed ratios exist in European countries as well – particularly in the Caucasus.²⁷ These numbers belie the assumption that abortion for reasons of sex selection is a problem only associated with one culture. Rather, this is a human problem, not limited to borders, specific cultures, or races. As Nicholas Eberstadt, Henry Wendt Chair in Political Economy at the American Enterprise Institute, confirms this phenomenon and notes in his research, “[S]ex-selective abortion is by now so widespread and so frequent that it has come to distort the population composition of the entire human species: this new and medicalized war against baby girls is indeed truly global in scale and scope.”²⁸

²⁵ Chapman and Benn referencing Barbara Katz Rothman, *The Tentative Pregnancy: Prenatal Diagnosis and the Future of Motherhood*. (1986).

²⁶ Brief at 18, <http://www.adfmedia.org/files/HorneIsaacsonAmicusBDF.pdf>. This brief argues more fully, “[T]his Court has never endorsed a right to abort children only because they have been detected to have a disability. In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), this Court repeatedly premised its reaffirmation of abortion rights in terms of the right to terminate an unintended pregnancy.” The brief goes on to argue “This Court quoted approvingly from its statement in *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972), that the liberty under consideration in *Casey* pertained to “the decision whether to bear or beget a child,” *Casey*, 505 U.S. at 851. This Court has never framed the protected abortion decision as whether to bear or abort a *particular* child based on identified traits of genetic variation, disability, or other health condition. Instead,” the brief argues, “*Casey* formulated the abortion decision as one confronting a woman ‘when the woman confronts the reality that, despite her attempts to avoid it, she has become pregnant,’ *id.* at 853 – not when she accepts a pregnancy at first, but then comes to perceive the child she is carrying as defective.” The same analysis should apply to sex-discrimination abortion.

²⁷ Central Intelligence Agency, World Factbook, “Sex Ratio, Country Comparison to the World.” <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html>.

²⁸ Nicholas Eberstadt, “The Global War Against Baby Girls,” *The New Atlantis*, Number 33, Fall 2011, pp. 3-18. Noting, “Estimates by the United Nations Population Division (UNPD) and the U.S. Census Bureau’s International Programs Center (IPC) — the two major organizations charged with tracking and projecting global population trends — make the point. According to estimates based on IPC data, a total of 21 countries or territories (including a number of European and Pacific Island areas) had SRBs of 107 or higher in the year 2010; the total population of the

Failure to address sex-selective abortion at home and abroad is a failure to address the role of women in society and the effect of sex selection on human relationships. Eberstadt's research drives this point home, noting,

The consequences of medically abetted mass feticide are far-reaching and manifestly adverse. In populations with unnaturally skewed SRBs, the very fact that many thousands — or in some cases, millions — of prospective girls and young women have been deliberately eliminated simply because they would have been female establishes a new social reality that inescapably colors the whole realm of human relationships, redefining the role of women as the disfavored sex in nakedly utilitarian terms, and indeed signaling that their very existence is now conditional and contingent.²⁹

This is, and should be, a non-partisan issue, yet liberal organizations and politicians consistently oppose and challenge policies enacted to protect preborn children from gender discrimination. Organizations such as the National Asian Pacific American Women's Forum consistently concede the existence of sex-selective abortion and decry the practice in one breath and in the next condemn measures enacted to end the unethical practice. Excerpts from the 2012 floor debate in the House of Representatives over the Prenatal Non-Discrimination Act (PRENDA) illustrates this point. Despite the fact that a vast majority of the voting public opposes sex-selective abortion and that gender discrimination is an egregious violation of fundamental rights, PRENDA was dismissed as a "Republican" issue meant to deprive women of their rights.

The Hill newspaper reported several comments on the bill by key Democrats, "We can all agree that women should not choose to terminate a pregnancy based solely on gender, but this bill criminalizes a legal procedure,' Rep. Suzanne Bonamici (D-Ore.) said Thursday afternoon." "It is another Republican intrusion into a woman's right to choose,' said Rep. Jim McDermott (D-Wash.)."³⁰

Recently, in an interview on women's rights and Middle East peace, then Secretary of State Hillary Rodham Clinton noted, "...[I]t's important that the United States — be a leader in continuing to promote women's rights and women's equality. It is in our interest, our security interest. It is a moral imperative. And it creates a better basis for us to — seek

regions beset by unnaturally high SRBs amounted to 2.7 billion, or about 40 percent of the world's total population." From <http://www.thenewatlantis.com/publications/the-global-war-against-baby-girls>

²⁹ Id.

³⁰ P. Kasperowicz (May 31, 2012). House rejects bill penalizing doctors for sex selection abortions. *TheHill.com* <http://thehill.com/blogs/floor-action/house/230283-house-rejects-bill-penalizing-doctors-for-sex-selection-abortions>

a more peaceful, prosperous, progressive world.”³¹ Clinton also stressed this point in a 2009 interview with the *New York Times* in which she stated, “Obviously, there’s work to be done in both India and China, because the infanticide rate of girl babies is still overwhelmingly high, and unfortunately with technology, parents are able to use sonograms to determine the sex of a baby, and to abort girl children simply because they’d rather have a boy. And those are deeply set attitudes.”³² Despite acknowledging the destructive and unethical nature of sex-selective abortion, Clinton and her policy allies have thus far been unwilling to address this issue legislatively. Truly, it is in the best interests of the citizens of the United States to establish laws that ban sex-selective abortion. In so doing, we will create and foster an environment where the worth of individuals is not determined by their sex and where women can be free from familial and cultural pressure to abort a child of a certain sex.

The elimination of girls prior to birth is a growing problem globally. Nobuko Horibe, the Director of the United Nations Population Fund’s Asia and Pacific Regional Office, addressed the seriousness of sex selection in her 2011 international forum speech on the issue.

“We must join forces to ensure that sex selection is understood as discrimination against women and girls and should end,” Ms. Horibe said in her speech to experts from 11 Asian, Eastern European and Caucasian nations. “We must accelerate our efforts and give priority to developing programmes and policies that foster norms and an attitude of ‘zero tolerance’ for discrimination, harmful attitudes and unethical practices, such as prenatal sex selection. Gender equality is at the very heart of each country’s successful development.”³³

“Zero tolerance” implies that even one girl aborted for the purpose of sex selection is too many. If one instance of prenatal discrimination is not offensive to us as a culture, then why should our moral compass shift when multiple children are affected? And who will be the arbiter of how much sex discrimination via abortion is too much? The unjust practice of eliminating girls or boys based on gender in the womb is far too glaring a problem to ignore.

³¹ Mitchell, A. (2013). Clinton on women’s rights, Middle East peace. *MSNBC*. [Interview Transcript]. Retrieved from http://www.nbcnews.com/id/35877287/ns/msnbc-andrea_mitchell_reports/t/clinton-womens-rights-middle-east-peace/#.VTK4KpNf8bM

³² Landler, M. (August 18, 2009). Saving the World’s Women. A New Gender Agenda. *The New York Times Magazine*. <http://www.nytimes.com/2009/08/23/magazine/23clinton-t.html?pagewanted=1&r=0>

³³ United Nations Population Fund, News. (5 October 2011). *Ending Gender Imbalances Must Remain International Priority, Says UNFPA’s Asia-Pacific Director*. Retrieved from <http://www.unfpa.org/news/ending-gender-imbalances-must-remain-international-priority-says-unfpa%E2%80%99s-asia-pacific-director>

Prenatal Sex Ratios

The newest and “by far the most comprehensive analysis of prenatal sex ratios ever performed”³⁴ conducted by Orzack et al. confirms the biological fact that about half of all babies at conception are male. “Our estimate of the sex ratio at conception is 0.5 (proportion male), which contradicts the common claim that the sex ratio at conception is male biased.”³⁵ Austad, in his analysis of the Orzack et al. research notes, “The slight male bias, typically ~51.3% of live births, is so consistent that when birth sex ratios deviate much from it, suspicions are aroused of sex-specific abortion or infanticide.”³⁶

In fact, the Orzack et al. study includes a thorough investigation of all previous induced abortion studies regarding the sex of preborn children.

Induced Abortions. To our knowledge, there are only 41 studies of the sex of fetuses from induced abortion; these data have never before been assembled and analyzed....³⁷Analysis of Induced-Abortion Data. Our analysis suggests that female biased mortality causes the CSR [cohort sex ratio] to increase between 2 and 20 wk CA [conception age].³⁸

The research also found that there is little to no variation in sex ratios in relation to maternal race or age.³⁹ The ratio of boys to girls consistently averages around 103-106

³⁴ Austad S.N., The human prenatal sex ratio; a major surprise. Proc Natl Acad Sci USA www.pnas.org/cgi/doi/10.1073/pnas.1505165112 in reference to 9 Orzack S. H., et al. (2015) The human sex ratio from conception to birth. Proc Natl Acad Sci USA, 10.1073/pnas.1416546112.

³⁵ 9 Orzack S. H., et al. (2015) The human sex ratio from conception to birth. Proc Natl Acad Sci USA, 10.1073/pnas.1416546112 at 1.

³⁶ Id. Austad S.N.

³⁷ Id. Orzack, S.H. at 2. Noting, “It is almost certain that all fetuses were naturally conceived (most analyses were published before 1978, when ART was introduced) and virtually all were sampled randomly with respect to fetal health and sex. The methods used to assign sex were histology (1 study), karyotype (20 studies), morphology (3 studies), and sex chromatin (17 studies). Thirty-nine studies specify trimester for each fetus; of these, 12 studies provide data allowing a CSR [cohort sex ratio] estimate for trimester 1 and for trimester 2. Twenty-four studies specify gestational age in weeks.”

³⁸ Id. at 7. Addressing the effect of artificial reproductive technology and sex ratios, “Assisted Reproductive Technology (ART) (i) The birth sex ratio of babies conceived via ART matches the birth sex ratio of babies conceived naturally. ii) The birth sex ratio for ART with in vivo conception and the birth sex ratio for ART with in vitro conception appear to be identical.” Pg 6) (And, “This increase [weeks 2-20] is consistent with the inference from the ART analysis that the early CSR could be female-biased. Induced abortion studies reporting female-biased first-trimester CSR estimates appear to be carefully done (17, 80–85). In addition, refs. 48 and 86–88 described female-biased CSRs for first trimester spontaneous abortions, but see ref. 89).”

³⁹ Id. at 3. Orzack et al. further explained the methodology, “We analyzed maternal age (MA) as a metric predictor of the CSR (Table 4). The model without age has strong support (ER ~ 33), which suggests that there is no association between the CSR and maternal age; most studies indicate that maternal age has little or no influence on the sex ratio at birth (45–46). Analysis of limited data (n = 819) suggested that there is no association between mother’s race and the CSR. We compared an overall model, a model stratified between black and nonblack mothers, and a model stratified between white and nonwhite mothers. The overall model had substantially greater support

boys for every 100 girls (a ratio of 1.03-1.06); thus China’s 2014 ratio of 115.88,⁴⁰ for example, is too high to be explained away by non-existent “natural variations” or expensive pre-conception gender selection procedures.

It is well-known that cultural preference for male offspring in some countries results in abortion for the purpose of sex-selection.⁴¹ “As *The Economist* recently noted in an article entitled, “The War on Baby Girls, Gendercide,” “In fact the destruction of baby girls is a product of three forces: the ancient preference for sons; a modern desire for smaller families; and ultrasound scanning and other technologies that identify the sex of a fetus.” Whatever the motivation, “For millions of couples, the answer is: abort the daughter, try for a son.”⁴²

In a call to end “gender-biased sex selection,” the United Nations Population Fund notes,

Today, more than 117 million women across Asia are “missing,” and many others are missing in Eastern European and Caucasus countries as well – largely the result of gender-biased sex selection, a form of discrimination.

Gender-biased sex selection can be measured using sex ratio at birth, a comparison of the number of boys born versus the number of girls born in a given period. The biologically normal sex ratio at birth can range from 102 to 106 males per 100 females. When many more boys are born than girls, it is a sign that sex selection is taking place. Ratios as high as 130 boys per 100 girls have been observed.⁴³

The Role of Preimplantation Sex-Selection

The existence of preimplantation sex-selection procedures (preimplantation genetic diagnosis [PGD] and sperm sorting) are often offered as proof that extremely biased sex ratios in countries like China and India are not the result of sex-selective abortion, but rather PGD. In Western nations, relatively pricey PGD and noninvasive prenatal testing procedures are gaining wider use and popularity, but those instances do little to diminish

than either stratified model.” Orzack’s research does not indicate that birth order affects the consistent CSR – an approximately equal balance of boys and girls at conception.

⁴⁰ Littlejohn, R., Women’s Rights Without Frontiers. (2015, April 9). *Chinese Men Outnumber Women by 33 Million After Decades of Gender Bias*. Retrieved from <http://www.womensrightswithoutfrontiers.org/blog/?p=1969>

⁴¹ *The Economist*. The War on Baby Girls, Gendercide. March 4, 2010. <http://www.economist.com/node/15606229>

⁴² Id.

⁴³ United Nations Population Fund, Prenatal Sex Selection. <http://www.unfpa.org/prenatal-sex-selection#sthash.IGF4HN5f.dpuf>. See also, Mara Hvistendahl, *Unnatural Selection: Choosing Boys over Girls, and the Consequences of a World Full of Men*, Public Affairs Publishing, p. 5-6 (2011); It’s a Girl, <http://www.itsagirlmovie.com/>

the existence of abortions performed for reasons of sex selection. Sperm sorting and other assisted reproductive measures do not always result in the desired gender and pre-implanted embryos of the “wrong” gender are likely destroyed, making PGD procedures no less objectionable because they pose the same ethical problems as sex-selective abortion.

The cost-prohibitive nature of preimplantation sex-selective procedures for citizens of the countries that exhibit such imbalanced ratios renders this conclusion suspect. IVF procedures cost tens of thousands of dollars (sperm sorting can cost around \$1,000), whereas ultrasounds that determine gender are relatively low-cost and much more widely available globally.⁴⁴ Typical citizens of India and China (where gender imbalances are well above average) are likely unable to afford preimplantation procedures, and are, therefore, much more likely to be using post-implantation ultrasounds to determine the sex of their children.⁴⁵ Post-implantation sex selection necessarily involves abortion.

Multiple countries, including Canada, have banned the practice of in vitro fertilization for the purposes of sex selection. The commentary on two new Canadian studies that examined the incidence of sex-selective abortion among immigrant populations in Canada, suggests that people in countries that have banned the practice may be taking advantage of the lax regulation in the U.S. by traveling here to practice sex-selective in vitro fertilization.⁴⁶

Sex-Selective Abortion is a Cross-Cultural Problem

Cultural son-preference is manifesting itself globally, and sex selection occurs in Western nations, like the U.S., in favor of both boys and girls. Thus, sex-selective abortion ban proposals are in no way motivated by bias against any particular race or ethnicity. As Eberstadt’s research shows, biased ratios exist cross-culturally and have a significant impact on human relationships and the role of women, globally.

Additionally, the Orzack study established that the consistency of natural sex ratios at conception transcends racial and ethnic boundaries. There is “no association between the mother’s race and the CSR.” “Analysis of limited data (n = 819) suggested that there is

⁴⁴ See <http://www.fertility-docs.com/programs-and-services/fertility-procedure-fees.php> ; <http://chooseagender.com/methods-of-gender-selection.aspx>

⁴⁵ See, *The Economist*. The War on Baby Girls, Gendercide. March 4, 2010. Noting, “IMAGINE you are one half of a young couple expecting your first child in a fast-growing, poor country. You are part of the new middle class; your income is rising; you want a small family. But traditional *mores* hold sway around you, most important in the preference for sons over daughters. . . . Now imagine that you have had an ultrasound scan; it costs \$12, but you can afford that. The scan says the unborn child is a girl. You yourself would prefer a boy; the rest of your family clamours for one. You would never dream of killing a baby daughter, as they do out in the villages. But an abortion seems different. What do you do?” <http://www.economist.com/node/15606229>

⁴⁶ Abdool S. Yasseen III MSc GDip, Thierry Lacaze-Masmonteil MD PhD. early release COMMENTARY Male-Biased Infant sex ratios and patterns of induced abortion. CMAJ, April 11, 2016 DOI:10.1503 /cmaj.160183

no association between mother's race and the CSR.⁴⁷ Thus, studies that show a male-biased sex selection occurring in various Asian nations and Asian immigrant communities in the U.S. are not motivated by racial animus, they simply reflect the fact that CSR numbers have been shown to be consistent globally, without respect to ethnicity, and the extremely male-biased sex ratios in certain communities prove gender discrimination and present major societal and ethical concerns.

In 2013, *The Economist* highlighted the most recent studies which showed markedly distorted sex ratios in the Caucasus regions.⁴⁸ The numbers have risen dramatically since 1991, indicating that male-biased animus toward the female unborn is not diminishing with increased development. The numbers seem to have risen in correlation with the availability of ultrasound machines, whose importation from the West was banned prior to the fall of the Soviet Union in 1991.⁴⁹ The correlation serves as further evidence that abortion is the primary culprit behind the rising male-biased sex ratios in these regions. Based on the studies and historical information, the author suggests that a long-held cultural preference for sons is again thriving in the absence of the Soviet regime. Most remarkably, however, based on a 2013 study, the author suggests that there is a much more pervasive "pent-up" desire for sons throughout the world.

A study by John Bongaarts of the Population Council, a New York think-tank, uses surveys in 61 countries to calculate the sex ratios that would result if parents had the number of sons and daughters they wanted. It turns out that in half the countries, the desired ratio is more than 110 (higher than India's, which is 108). Armenia and Azerbaijan are among those with the highest rates, but all over the world (especially Africa) parents say they want more sons. As Mr. Bongaarts says, "there is a large pent-up demand for sex selection." If the Caucasus is a guide, that demand can pretty easily be met.⁵⁰

If the desire for sons is prevalent across cultures and the demand for sex selection via abortion is easily met, there exists an even greater urgency for sex-selection bans. By highlighting the fact that countries outside of India and Asia are demonstrating a propensity to abort females at even higher rates, we must conclude that 1) no culture is immune to gender discrimination in the form of sex-selective

⁴⁷ Orzack S. H., et al. (2015) The human sex ratio from conception to birth. *Proc Natl Acad Sci USA*, 10.1073/pnas.1416546112

⁴⁸ Gendecide in the Caucasus, Son-preference, once suppressed, is reviving alarmingly. (2013, September 21). *The Economist*. Retrieved from <http://www.economist.com/news/europe/21586617-son-preference-once-suppressed-reviving-alarmingly-gendecide-caucasus>.

⁴⁹ Id. "As elsewhere, cheap ultrasound machines, which can detect the sex of a foetus, made a difference. Before the collapse of the Soviet Union, such machines were rare because parts had military use and their export from the West was banned. As they spread after 1991, sex-selective abortions rose."

⁵⁰ Id. See also, Bongaarts, J. (2013, June). The Implementation of Preferences for Male Offspring. *Population and Development Review*, Vol 39, No 2.

abortion, 2) support for sex-selection abortion bans is not motivated by ethnic bias, and 3) immediate action is needed.

Addressing Sex Discrimination through Regulation

Global sex-selective regulations involve not only abortion bans, but more often bans on assisted reproductive technologies, most commonly preimplantation genetic diagnosis (PGD), when used for purposes of sex selection. Such bans consist of explicit prohibitions (for any reason) and prohibitions with qualifications, such as bans containing “medical” exceptions. A 2009 memo from the Center for Genetics and Society presents a comprehensive chart of countries with prohibitions.⁵¹ The Center states that, as of 2009, Austria, New Zealand, South Korea, Switzerland, and Vietnam⁵² explicitly prohibit sex-selection, while 31 other nations prohibit the “social” use⁵³ of sex-selection, including China, India, the United Kingdom, France, and Germany.⁵⁴ Dr. Sunita Puri, one of the authors of a well-known study on sex selection in the U.S., noted that “more than 30 countries, including Canada and the United Kingdom, have already banned sex selection on the grounds that it reinforces gender inequality and sets a precedent for legitimizing eventual selection of traits ranging from eye color to intelligence.”⁵⁵

Although not every country prohibits sex-selective abortion specifically, there is obviously a global awareness that prenatal sex-selection is unethical based on the sheer number of countries that prohibit preimplantation sex-selection techniques. The United States is, in fact, lagging behind the rest of the world on this front. The use of PGD, sperm sorting, and noninvasive prenatal testing (NIPT) for purposes of choosing the sex of offspring is on the rise in America and presents serious ethical dilemmas including a potential increase in abortion when parents who use the procedures become pregnant with the “wrong” gender. Not only should the United States institute sex-selective abortion bans

⁵¹ Countries with laws or policies on sex selection, Marcy Darnovsky, Center for Genetics and Society, April 2009. This memo was prepared for the April 13, 2009 New York City sex-selection meeting, and updated May 9 to correct two errors. http://geneticsandsociety.org/downloads/200904_sex_selection_memo.pdf

⁵² Kosovo enacted a prohibition on February 4, 2009, as noted in FN 42 in Myths article (Law No. 03/L-110 on the Termination of Pregnancy (promulgated by the Government of Kosovo, Jan. 22, 2009, effective Feb. 4, 2009) at art 14.

⁵³ “‘Social uses prohibited’ means that sex selection is permitted for ‘medical reasons’ – that is, for situations in which an embryo or fetus might be affected by a serious sex-linked disease.”

⁵⁴ A full list of the countries that limit sex-selective abortion for non-medical purposes is as follows: Australia, Belgium, Bosnia & Herzegovina, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Israel, Italy, Latvia, Lithuania, Netherlands, Norway, Portugal, Russia, San Marino, Singapore, Spain, Turkey, and the United Kingdom.

⁵⁵ Sunita P., (2011, August 2). I Know it’s a Girl and I Need Your Help to Get it Out of Me. *Slate*.

Retrieved from

http://www.slate.com/articles/double_x/doublex/2011/08/i_know_its_a_girl_and_i_need_your_help_to_get_it_out_of_me.2.html

for the sake of our own citizens, but also as a way to promote women's equality and women's rights around the globe.

It is disingenuous and unacceptable for countries, organizations, lawmakers, or individuals to decry sex-discrimination and support bans on preimplantation sex-selection, yet ignore or outright oppose bans on the most virulent form of prenatal sex discrimination – elective abortion.

Male-biased sex ratios and son-preference are a serious global problem, as is all sex discrimination – against either sex. As discussed above, currently, access to preimplantation gender selection is limited and likely cost-prohibitive in most countries with skewed sex ratios while ultrasound access is widespread. Thus, the policy of banning only preimplantation procedures in order to combat prenatal sex discrimination is incomplete. The global problem of sex discrimination via abortion will continue to spread. Focusing only on preimplantation bans without a correlating ban on sex-selective abortion in the U.S. would be inconsistent, incomplete, and ineffective in curbing the practice of gender discrimination via sex selection.

Sex Selection in the U.S. Among Asian and Caucasian Populations

Empirical data shows the existence of sex-selective practices among foreign-born Chinese, Indians and Koreans in the U.S. One major well-respected study, which has been widely cited by both proponents and opponents of sex-selection abortion bans, was conducted by Douglas Almond and Lena Edlund, and is based on Census data from 2000.⁵⁶ Most significantly, the Almond/Edlund study found that third births among families with two daughters displayed a ratio of 151 boys to 100 girls – an extreme male-biased ratio. Even attempts to discredit the study confirmed what Almond and Edlund concluded, that male-biased sex ratios existed in the third births of families in these communities.

The overall boy-girl sex ratio of Caucasian-Americans is 1.05 in comparison to Asian-Americans at 1.03 – both within normal range. Thus, some opponents of sex-selection bans claim that sex-selection is not a problem in the U.S. among Asian communities because the overall ratio is normal. Their macro analysis misses the point of the Almond/Edlund study – that son-preference is clearly evident in these communities, but that it manifests itself in third births.

Seema Mohapatra, Assistant Professor of Law, Barry University, summarized the significance of these findings in her 2013 article, *Global Legal Responses to Prenatal Gender Identification and Sex Selection*:

⁵⁶ Almond, D. & Edlund, L. (2008) Son-Biased Sex Ratios in the 2000 United States Census 105 PNAS 5681

Although the sex ratios of the oldest child in U.S.-born children of Chinese, Korean, and Asian Indian parents do not suggest sex selection, the ratios for subsequent children do suggest that gender-selection practices may be at play. In these populations, if there was no previous son, the second or third child was more often male than should be if sex selection was naturally occurring. If the first child was a girl, the sex ratio for the second child was 1.17 favoring males. If the first two children were girls, the ratio for the third was 1.51 favoring males. In contrast, the sex ratios for white Americans in the United States in the same period were within the range of biologically normal and varied only slightly with parity and sex of previous children. What is significant about these statistics is that these son-biased sex ratios are comparable to those documented for second and third children in India, China, and South Korea.⁵⁷

The latest research out of Canada, released just this week, confirms this phenomenon. The first study, which examines variations in male–female infant ratios among births to Canadian- and Indian-born mothers, from 1990–2011 found that by the third birth, 138 boys were born to Indian-born mothers for every 100 girls, and by the fourth birth, 166 boys were born to every 100 girls.⁵⁸ The second study more closely implicates the culprit of such skewed ratios – sex-selective abortion. The study compared sex ratios at birth after induced abortion among Canadian-born and non-Canadian-born women. The study found that within the province (Ontario), women from India who already had two daughters gave birth to 196 boys for every 100 girls. If an Indian-born mother with two daughters received an abortion before her third child, the ratio jumped to 326 boys for every 100 girls, and 409 boys for every 100 girls if the mother had multiple abortions.⁵⁹

Evidence would suggest that families who have had two previous daughters and who come from communities that traditionally favor sons will most likely feel pressure to give birth to a son at some point in their lives, even if they reside in a free society. Heritage and deeply-ingrained cultural practices cannot be easily discarded.

A similar study by Joseph Abrevaya states, “[E]ven if the practice of sex selection were to increase in the United States it would not likely lead to a gender-imbalance problem in the aggregate.”⁶⁰ Critics of banning sex-selective abortion look to this conclusion to support their claim that bans are unnecessary. The implications of this stance

⁵⁷ Mohapatra, S. (Spring 2013) Global Legal Responses to Prenatal Gender Identification and Sex Selection. *Nevada Law Journal*. Vol 13. No. 3. 690.

⁵⁸ Urquia ML, Ray JG, Wanigaratne S, et al. Variations in male– female infant ratios among births to Canadian- and Indian-born mothers, 1990–2011: a population-based register study. *CMAJ Open* 2016; 4(2):E116-23.

⁵⁹ Urquia ML, Moineddin R, Jha P, et al. Sex ratios at birth after induced abortion. *CMAJ* 2016 Apr. 11 [Epub ahead of print].

⁶⁰ Abrevaya, J. (2009, April). Are There Missing Girls in the United States? Evidence for Prenatal Gender Selection. *American Economic Journal: Applied Economics*. Vol 1 No. 2. 1-34.

are that, as a nation, we should be concerned with prenatal sex-discrimination only when the problem becomes so extreme that the birth ratios match those of other countries with extreme bias. Further, such opposition implies that we should make it our policy to confront sex discrimination on principle only when it affects a certain threshold number of people. Who determines what number is sufficient to justify action? If only two or three women were fired by a large corporation because of their sex, would a stand against discrimination be justified, or would we sit on the policy sidelines until the problem affects “enough” women?

Yet another study by Sunita Puri et al.⁶¹ presents a qualitative analysis of the cultural pressure/preference to have male children among a group of 65 South Asian immigrant women seeking to have sons. Consideration of the personal experience of physicians or others in Asian-American communities is an integral part of well-informed policy-making on the issue of sex- selective abortion.

An internal medicine physician, Dr. Puri spent six years interviewing patients and doctors in an attempt to better understand issues related to sex selection in the United States. She elaborated on her journey in an article for *Slate*.⁶² Puri found that sex-selective abortion is, in fact, not uncommon in the United States and that, thanks to lack of consistent policy on the issue, physicians are often ill-equipped to deal with the ethical dilemma. Puri poignantly states,

*Unlike their Chinese and Indian counterparts, who cannot legally offer sex selection, American doctors are left to decide on a case-by-case basis whether to perform these procedures, without any consistent ethical guidelines. The reasons American women undergo them are complex, from situations that don't seem particularly troubling (the upper-middle-class woman who wants a daughter to "balance out" her three boys) to those that are deeply concerning (the immigrant woman who wants a son to avoid emotional abuse by her in-laws).*⁶³

Puri’s article reveals relevant and important information that results only from lengthy study and experience, and highlights two issues vital to the discussion of sex-selective abortion bans. First, as a society, by neglecting to address sex-selective abortion, our physicians are left with no policy guidelines they can consult regarding the ethics of

⁶¹ Puri, S. et al., (2011, April). There is Such a Thing as Too Many Daughters, but Not Too Many Sons; A qualitative Study of Son Preference and Fetal Sex Selection among Indian Immigrants in the United States. *Social Science & Medicine*. Vol 72. 1169-76. doi: 10.1016/j.socscimed.2011.01.027

⁶² Puri, S. (2011, August 2). I Know it’s a Girl and I Need Your Help to Get it Out of Me. *Slate*.

Retrieved from

http://www.slate.com/articles/double_x/doublex/2011/08/i_know_its_a_girl_and_i_need_your_help_to_get_it_out_of_me.2.html

⁶³ Id.

sex-selective abortion. Second, we must recognize that cultural and familial pressure to give birth to sons is a real problem faced by women in the United States. There are women who are clearly being pressured or coerced into aborting their children based on sex, adding elements of force to a situation of gross discrimination. Both problems can be addressed and mitigated by banning the practice of sex-selective abortion and ensuring broad public awareness of the ban and the principles of equality that underlie it.

An ingrained cultural preference or belief can still permeate the lives of people in prosperous, free societies. I was recently told by an Indian-American doctor, whose views on the subject of sex-selective abortion bans are unknown to me, that although the cultural preference for sons varies in severity across economic, regional, and educational backgrounds, it is “no doubt” still an issue among Indian communities here in the United States. Such personal knowledge and experience are indispensable to well-informed, effective policy-making.

We have additional evidence that sex-selective abortions are taking place regularly in the United States. The non-profit organization Live Action conducted an investigation of abortion clinics nationwide in 2012 and found them willing to perform abortions when the reason given for the abortion was solely sex-selection.⁶⁴ Video documentation shows that abortion clinics in Texas, New York, Arizona, Hawaii, and North Carolina all agreed to abort unborn children based solely on sex-based preference.⁶⁵

These investigations demonstrate the utter lack of concern that these clinics had for practices clearly meant to end the life of an unborn child for reasons of sex discrimination. Such cavalier attitudes towards these unethical practices can undoubtedly be traced, in part, to the refusal of our society to enact protections against prenatal sex discrimination. As the laws change, awareness of and concern over sex discrimination will undoubtedly shift. Additionally, if these clinics were so openly willing to perform sex-selective procedures, we can only guess at the magnitude of the actual problem when we consider the large number of abortion clinics around the country and the competitive pressures between them.

The Necessity of Sex-Selective Abortion Restrictions

Even the UNFPA and other global organizations have acknowledged the serious implications of male-biased sex selection and advocated taking steps to remedy the problem. The World Health Organization (WHO) emphasizes that the problem is widespread, dangerous for society, and a serious obstacle to gender equality,

⁶⁴ Live Action. Retrieved from <http://liveaction.org/gendercide/>

⁶⁵ Id. <http://liveaction.org/gendercide/texas/>; <http://liveaction.org/gendercide/new-york/>; <http://liveaction.org/gendercide/arizona/>; <http://liveaction.org/gendercide/hawaii/>; <http://liveaction.org/gendercide/north-carolina/>

Sex selection for non-medical reasons raises serious moral, legal, and social issues. The principal concerns are that the practice of sex selection will

1. *distort the natural sex ratio leading to a gender imbalance and*
2. *reinforce discriminatory and sexist stereotypes towards women by devaluing females.*

In some countries, such as India and China, it is commonly known that the practice of sex-selective abortion has resulted in distortions of the natural sex ratio, in favour of males. In addition, there is concern that sex selection involves inappropriate control over nonessential characteristics of children and may place a potential psychological burden on, and hence cause harm to, sex-selected offspring.⁶⁶

Former Secretary of State Clinton also acknowledged in her 2013 MSNBC interview that sex discrimination via abortion has far-reaching consequences,

Think of what that's going to mean in certain parts of the world, particularly Asia — where this imbalance is most acute — when you have a very large population of young men who can't find wives. A kind of — potential social instability that that breeds. So this is not only about the tragedy of young girls not being given what is needed in order to survive and live, but what it might mean in terms of too many young men.⁶⁷

In fact, a recent article in *Perspectives in Biology and Medicine* discussing early prenatal testing highlighted the concern that fewer women in a society increases the risk of violence against women and the demand for sex trafficking.⁶⁸

It is imperative that a solution to the problem of sex-selection include a ban on the most obvious and widely available method, sex-selection abortion.

The focus in enacting such laws should not be whether the sex ratios/data show a specified level of disparity, but rather on whether such laws have the potential to protect any person from sex-discrimination. Additionally, it is important to implement policies that

⁶⁶ World Health Organization Genomic Resource Centre, Gender and Genetics. Sex Selection and Discrimination, Ethical Issues Raised by Sex Selection. <http://www.who.int/genomics/gender/en/index4.html>

⁶⁷ Mitchell, A. (2013). Clinton on women's rights, Middle East peace. *MSNBC*. [Interview Transcript]. Retrieved from http://www.nbcnews.com/id/35877287/ns/msnbc-andrea_mitchell_reports/t/clinton-womens-rights-middle-east-peace/#.VTK4KPnF8bM

⁶⁸ A.R. Chapman, P.A. Benn (Autumn 2013). Noninvasive Prenatal Testing for Early Sex Identification: A Few Benefits and Many Concerns. *Perspectives in Biology and Medicine*, VOL. 56 NO. 4, pp. 530-547. Johns Hopkins University Press. DOI: 10.1353/pbm.2013.0034.

take a moral stance on our deeply-held republican ideals because they serve as invaluable instruction in ethical societal practice, regardless of quantifiable outcomes. Claiming that the lack of precisely identifiable numbers of children saved from sex discrimination via sex-selective abortions justifies opposition to sex-selective abortion bans serves to perpetuate the unethical position that only saving a certain number of children could justify laws banning the practice.

Research and anecdotal evidence shows that sex-selective gender discrimination is taking place often in the U.S., justifying legislative action. Sex-selective abortion bans serve to educate the public on the unethical practice of prenatal discrimination. Such education creates and fosters social mores that reject unjust practices. If we, as a society, refuse to enact legislation that could spare the lives of even a few people from a lethal form of sex discrimination, then we delegitimize the moral claim that sex discrimination is wrong in the first place.

Normalization of sex ratios in South Korea in recent years has been used as evidence that evolving norms and economic development minimize the male-biased ratios absent sex selective bans.⁶⁹ This assertion, however, fails to account for the context that abortion in general is and has been illegal in South Korea since 1953, with the only exceptions being rape, incest, and severe genetic disorders.⁷⁰ In fact, it has been noted that in more recent years, South Korea has even more strictly enforced its ban on abortion due to a lower overall birthrate.⁷¹ Thus, it seems clear that as South Korea advanced economically, the long-time ban on abortion in general has played an important role in the dramatic sex ratio balancing in South Korea.

An additional factor in the sharp decline, as noted by Eberstadt, was a significant cultural shift, “stigmatizing the practice” (of female feticide). The societal shift was the result of a national conversation on the serious problem of female feticide and the implications of the practice on society and families.⁷² Introduction, support, and implementation of bans on sex selective abortion in the U.S. can precipitate a national

⁶⁹ *Myths* at 14.

⁷⁰ South Korea Upholds Abortion Ban (August 23, 2012) *The Guardian*.

<http://www.theguardian.com/world/2012/aug/23/south-korea-abortion-ban-upheld>; South Korea’s Highest Court Upholds Abortion Ban. LifeNews.com. <http://www.lifenews.com/2012/08/30/south-koreas-highest-court-upholds-abortion-ban/>

⁷¹ *Id.* *The Guardian*

⁷² Nicholas Eberstadt, “The Global War Against Baby Girls,” *The New Atlantis*, Number 33, Fall 2011, pp. 3-18. Noting, “...South Korea’s SRB reversal was influenced less by government policy than by civil society: more specifically, by the spontaneous and largely uncoordinated congealing of a mass movement for honoring, protecting, and prizing daughters. In effect, this movement — drawing largely but by no means exclusively on the faith-based community — sparked a national conversation of conscience about the practice of female feticide. This conversation was instrumental in stigmatizing the practice, not altogether unlike the way in which nationwide conversations of conscience helped to stigmatize international slave-trading in other countries in earlier times.” Retrieved from <http://www.thenewatlantis.com/publications/the-global-war-against-baby-girls>.

discussion on the problem of sex discrimination through abortion and its consequences, domestically and globally.

When faced with a problem as widespread as sex discrimination via abortion, a multi-faceted attack on the injustice is warranted. Because abortions remain underreported and because of the seriousness of the offense of sex discrimination, a sex-selection abortion ban is the most practical tool in the fight against “gendercide.”

Sex-Selection Bans Should Transcend Party Lines

The claim that banning all abortion is the “primary motivation” for anyone who supports a sex-selective abortion ban is often repeated by opponents of the measures. Such statements constitute a sweeping generalization for the purpose of distracting the public from the very serious problem of prenatal sex discrimination. The Republican/Democratic divide on proposed bans serves only as an admission that liberal policy groups and liberal lawmakers are not opposed to all forms of sex discrimination.

If there is a very real threat of sex discrimination in this country – discrimination that has been condemned openly by the United Nations and Hillary Clinton, among others – then those who truly cling to the ideals of equality will not be swayed from addressing it by political or ideological pressure. Allowing a political party affiliation or a disagreement about abortion as a whole to interfere with passing a law that would protect people from a practice one agrees is unethical is a sad state of affairs. The American public is clearly in overwhelming opposition to the practice of aborting children based on sex as evidenced by the polls.

Sex-Selective Bans Are not a Threat to Women or Women’s Health

Some opponents have expressed concerns that women’s healthcare would be negatively affected by the bans or that pregnant women would face prosecution for violations of the bans. Such fears are completely unfounded. Currently, only those who perform the sex-selective procedure and those who have coerced or solicited the pregnant mother to have the procedure are liable under the bans. Furthermore, even as to the limited scope of individuals’ potential liability under those laws, intent, knowledge, and/or reckless disregard is required. Whereas sex discrimination is currently a reality in the United States, the fear that bans would result in “denial of health care” is mere speculation and simply an attempt to obfuscate the discussion and frustrate passage of sex-selective bans. Additionally, the unfounded claim that women’s “healthcare” would be negatively affected by sex-selection bans assumes that selecting a child of a desired gender is a legitimate part of “healthcare” rather than what it really is – sex discrimination and an attempt to create specific “types” of offspring to satisfy parental or family preference.

In contrast to claims that such bans would jeopardize the mother's health, the actual threat facing pregnant mothers in relation to selective abortion is coercion, as previously discussed. Pressure to abort in communities where son preference exists is a reality for some women in the United States. Dr. Puri documented the sad predicament of women who were aborting their daughters in the United States because of pressure from family members.⁷³ Sex-selective abortion bans protect women who find themselves in such situations because they often provide for the punishment of persons involved in the coercion.⁷⁴

Conclusion

“When a man steals to satisfy hunger, we may safely conclude that there is something wrong in society – so when a woman destroys the life of her unborn child, it is an evidence that either by education or circumstances she has been greatly wronged.” These words by early feminist Maddie H. Brinckerhoff seem to have faded from our national discourse.⁷⁵ The problem of sex-selective abortion is rooted in something much deeper than the practice itself. It is rooted in the failure of our nation to recognize that sex-selective abortion tears at the very fabric of liberty by denying equal protection under the law to a segment of the population. If discrimination against a girl or boy on the basis of sex after he or she is born is prohibited, why then do we refuse to enact laws that protect those same children from lethal sex-discrimination prior to birth? We have thus far done a disservice to women and society as a whole by refusing to educate our citizenry on the importance of equality under the law in every instance of sex discrimination – including prenatal sex discrimination.

Such discrimination also presents the complex ethical questions of birthing children merely to fulfill parental preferences and expectations. The American Society for Reproductive Medicine notes that sex-selection “fails to evidence unconditional parental acceptance of their children in appropriate respects.”⁷⁶ Researchers Chapman and Benn echo this concern, stating that sex selection of offspring (specifically in reference to non-invasive prenatal testing [NIPT] procedures) “treats the child as an artifact of the

⁷³ Puri, S. (2011, August 2). I Know it's a Girl and I Need Your Help to Get it Out of Me. *Slate*.

Retrieved from

http://www.slate.com/articles/double_x/doublex/2011/08/i_know_its_a_girl_and_i_need_your_help_to_get_it_out_of_me.2.html

⁷⁴ H.R. 3541 Sec. 3(a), adding Sec. 249(a)(2), (3) of Ch. 13, tit. 18 U.S.C. (2011).

⁷⁵ Brinckerhoff, M. H. (September 2, 1869). *The Revolution*. 4 (9): 138 – 139

⁷⁶ ETHICS PAPER FROM AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE (ASRM) ASRM Pages, VOL. 103 NO. 6, June 2015, pp 1418-22. Ethics Committee of ASRM, ASRM, Birmingham, AL. “Use of reproductive technology for sex selection for nonmedical reasons.”

reproductive process and as an opportunity to design children according to parental standards of excellence.”⁷⁷

Such alarming practices demonstrate a pressing need for implementation of policy in the U.S. that will unequivocally label sex-selective abortion as a form of sex discrimination and prohibit its practice.

We can turn the tide of prenatal discrimination by first acknowledging the obvious, that prenatal sex-discrimination in all its forms is unethical and unacceptable. We must accept that sex-selective abortions occur globally, even in the United States, and acknowledge the serious consequences that result from gender imbalances and the refusal to condemn sex-selective abortion. Sex-selective abortion perpetuates sex discrimination in general and specifically, in many countries, the attitude that male children are preferable and somehow superior to female children.

Reversal of sex discrimination in the United States begins with implementing sex-selective abortion bans, considering regulations of preimplantation sex selection, and instituting national abortion reporting requirements. Allowing these facts to inform our public policy and taking the steps necessary to eliminate sex-selective abortion will put the United States squarely on the frontlines in fighting the actual “war on women.” Such a stance will create a platform from which the U.S. can affirm the unique value of each individual, and can publicly condemn unjust discrimination against either sex.

Anna Higgins, J.D. is an associate scholar for the Charlotte Lozier Institute.

⁷⁷ A.R. Chapman, P.A. Benn (Autumn 2013). Noninvasive Prenatal Testing for Early Sex Identification: A Few Benefits and Many Concerns. *Perspectives in Biology and Medicine*, VOL. 56 NO. 4, pp. 530-547. Johns Hopkins University Press. DOI: 10.1353/pbm.2013.0034.