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In the first four months of 2010, seven states offered bills banning abortions based on the pregnant women's knowledge of the sex or race of the fetus. On the federal level, a bill has been introduced twice in the House of

Representatives that would ban these so-called "sex-selection" and "race selection" abortions. This issue brief will summarize the state of the law on the federal and state levels, analyze emerging legislative trends, discuss

relevant statistics within Asian Pacific Islander (API) communities in the U.S., and apply the reproductive justice framework in addressing NAPAWF's position on these types of bans.

Federal and State Landscape

Before 2000, only two states banned sex-selection abortions. In 1975, the Illinois legislature passed a law that prohibited performing an abortion "with knowledge that the pregnant woman is seeking the abortion solely on account of the sex of the fetus." In 1982, Pennsylvania, which bans abortions unless they are "necessary" determined by the provider's best clinical judgment, added abortions sought solely based on the sex of the "unborn child" to the list of abortions that are not "necessary."

However, with the introduction of the so-called "Pre-Natal Nondiscrimination Act" (Pre-NDA) in the House of Representatives in 2008, a growing trend emerged on the federal and state levels to ban sex selection abortions. In 2009, three states introduced bills to ban sex-selection abortions; in 2010, seven states introduced such bills, including Oklahoma, whose bill was signed into law by the governor on April 2, 2010. Of those states, five also proposed bans on so-called

"race-selection" abortions.

Laws at-a-glance

Jurisdictions that currently ban sex-selection abortions

Illinois Pennsylvania
Oklahoma

Jurisdictions with proposed race- or sex-selection abortion bans

Arizona Georgia
Idaho Michigan
Minnesota Mississippi
New Jersey West Virginia

Impact on Women of Color

The relationship between these types of abortion bans and structural forms of oppression, such as racism and discrimination and mistreatment of women and girls are troubling. So-called "race-selection" abortion bans specifically target Black communities, but affect all women. While the notion of "sex-selection" serves to perpetuate gender stereotypes and binaries within the Asian American community.

Banning abortions does nothing to address the root causes of racism or sexism; instead these bans simply serve to impose increased scrutiny on the motives and decisions of women of color who seek abortion care. Rather than limit access to safe reproductive health care, communities of color need to address the intersections of race, ethnicity, class, culture, and sexual orientation holistically in order to eliminate pressures that encourage sex and trait selection.

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

Many of the proposed laws disingenuously invoke language supporting civil rights and human rights for communities of color, particularly Black communities. However, leg-

islaters supporting these laws often have legislative histories that are hostile towards women’s rights, abortion, health care access, and civil rights. It is critical that we interrogate the voting records of these self-appointed champions of civil rights and gender justice in order to uncover their true motives.

Debunking the civil rights myth requires both applying the reproductive justice framework and having a complete understanding of the data used to support the notion that “Black children are an endangered species.”¹¹ So-called “race-selection” abortion bans further stigmatize the bodies of women of color, may dis-

courage abortion providers from providing abortion services to women of color due to fear of civil or criminal liability, and impose an additional barrier for women seeking abortion services, disproportionately impacting communities of color.

Furthermore, these bans have been crafted by their supporters to drive a wedge between communities of color and mainstream pro-choice groups by pitting purported “anti-racism” efforts against abortion rights. Maintaining unified opposition to these attacks requires advocates to address internal conflicts around sexism, racism, homophobia or classism.

Lastly, NAPAWF is critical of the framework perpetuated by supporters of these types of abortion bans that delinks sex and race. The notion of a “race-selection” abortion is inextricably linked to gender, just as son preference is inextricably linked to race. NAPAWF insists that one’s lived experiences — including their gender, race, class, sexuality, culture, and other factors — must be taken into account in their totality, because forms of oppression are interwoven and cannot be tackled individually. Refusing to neatly parse identities is a powerful tool in crafting an opposition strategy to these types of bans.

Sex-Selection in API Communities

Two recent studies relying on 2000 Census data confirm the existence of skewed sex ratios in certain populations in the United States.¹² These studies suggest that sex selection in favor of choosing boys is being exercised by certain Asian and Pacific Islander (API) American communities in the U.S., particularly among Indian-, Chinese-, and Korean-American parents. Son preference is most apparently exercised for the second and third children in these families when the first child was female.¹³ It is be-

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lieved, but not confirmed through research, that the prevalence of son preference in Asian communities in the United States stems from the same reasons for the predominance of sex-selection in India, China, and South Korea: cultural norms such as the elevated social status of men, the ability of sons to carry on the family name and perform certain

cultural rituals, men’s ability to contribute more to family income, and traditions that require sons to care for aging parents.¹⁴ Additionally, marketing of sex-selection technologies targeted toward Asian-American communities exacerbates the problem and plays a role in the demand for sex-selection in the United States.¹⁵

Emerging Legislative Trends

A further reading of the legislation reveals anti-abortion advocates continue to target abortion providers. Pre-NDA sets up a three-prong statutory system, to intimidate abortion providers, which state legislatures are mimicking. The bill bans three things: providing an abortion if the provider knows that the abortion is

sought based on the sex or race of the fetus or prospective parent; the use or threat of force to coerce a sex-selection or race-selection abortion; or soliciting or accepting funds for the purpose of financing a sex- or race-selection abortion.¹⁶

Many of the bills provide civil remedies for parties presumed to

be affected by a sex-selection abortion and include clauses releasing the pregnant woman from civil or criminal liability.¹⁷ Oklahoma’s law establishes civil remedies for the broadest array of persons: the spouse, parent, sibling, or guardians of the pregnant woman are all entitled to damages in the event the law is violated.

Finally, many of the bills would establish a duty on behalf of a

variety of medical professionals.¹⁸ Oklahoma's law provides that the licenses of abortion providers lia-

ble under the statute would be subject to suspension or revocation.

Looking Ahead...

Anti-choice legislators have made it clear that they are using sex selection as a potential wedge issue to divide progressive and social justice organizations, as well as to advance the anti-choice movement's overall strategy to chip away at *Roe v. Wade*. Moving forward, partnerships between NAPAWF and reproductive

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

For more information and helpful resources

Please consult TAKING A STAND: TOOLS FOR ACTION ON SEX SELECTION, co-authored by NAPAWF, Generations Ahead, and Asian Communities for Reproductive Justice, available at <http://http://napawf.org>.

¹ 720 Ill. Ann. Stat. 510/6(8) (1975).

² 18 P.A. C.S.A. § 3204 (1982).

³ H.R. 7016, Susan B. Anthony Prenatal Non-Discrimination Act of 2008; H.R. 1822, Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2009. H.R. 7016 died in 2008; H.R. 1822 was referred to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties on April 27, 2009.

⁴ Oklahoma, H.B. 1595 (Okla. 2009), Minnesota, S.F. 1073/H.F. 1196 (Minn. 2009), and Michigan, S.B. 799/H.B. 5125 (Mich. 2009), each introduced legislation that would ban sex selection abortions in 2009. Oklahoma's sex selection abortion ban was ruled unconstitutional in February 2010 as it violated Oklahoma's single-subject rule. *Nova Health Systems v. Edmonson*, 2010 WL 716224 (Okla. 2010).

⁵ West Virginia, H.B. 2302/S.B. 62 (W. Va. 2010), Mississippi, S.B. 2166 (Miss. 2010), New Jersey, A. 162 (N.J. 2010), Georgia, S.B. 529/H.B. 1155 (Ga. 2010), Arizona, H.B. 2784 (Ariz. 2010), and Idaho, H.B. 693 (Id. 2010) introduced bills banning sex selection abortions in 2010. Additionally, Oklahoma introduced a second version of its sex-selection abortion ban, in compliance with the state's single-subject rule, in 2010. S.B. 1890 (Okla. 2010).

⁶ See Gov. Brad Henry, Bill Tracking, <http://www.ok.gov/governor/billtrack/index.php> (last visited April 14, 2010).

⁷ Arizona, H.B. 2784 (Ariz. 2010), Georgia, S.B. 529/H.B. 1155 (Ga. 2010), Idaho, H.B. 693 (Id. 2010), Mississippi, S.B. 2166 (Miss. 2010), and New Jersey, A. 162 (N.J. 2010).

⁸ See SisterSong Women of Color Reproductive Justice Collective, SisterSong OPPOSES HB 1155,

http://www.sistersong.net/documents/HB_1155_Tlking_points.pdf (last visited April 15, 2010) ("The false assumption that abortion providers throughout the state 'solicit' women of color is unfounded and inflammatory. We recognize that the lived experiences of women of color, and Black women specifically, drive how and when women choose abortion, not abortion providers who defend women's rights."). SisterSong goes on to say, specifically related to the bill in Georgia, "This bill was created under the false assumption that abortion doctors target and solicit women of color, particularly Black women, to have abortions." *Id.*

⁹ GENERATIONS AHEAD, NAT'L ASIAN PACIFIC AMERICAN WOMEN'S FORUM & ASIAN COMMUNITIES FOR REPRODUCTIVE JUSTICE, TAKING A STAND: TOOLS FOR ACTION ON SEX SELECTION 5 (2009), available at <http://napawf.org/wp-content/uploads/2010/01/Toolkit-final.pdf> [hereinafter Sex Selection Toolkit].

¹⁰ *Id.*

¹¹ This phrase accompanied a highly publicized billboard advertisement campaign in Georgia designed to garner support for its ban on "race-selection" abortions. See, e.g., Shaila Dewan, *Anti-Abortion Billboards on Race Split Opinions in Atlanta*, N.Y. TIMES, Feb. 5, 2010, available at <http://www.nytimes.com/2010/02/06/us/06abortion.html>.

¹² *Id.* at 2 (citing Douglas Almond & Lena Edlund, *Son-Biased Sex Ratios in the 2000 United States Census*, Proceedings of the National Academy of Sciences, Vol. 105, No. 15 (April 15, 2008); Jason Abrevaya, *Are There Missing Girls in the United States? Evidence from Birth Data*, AMERICAN ECONOMIC JOURNAL, vol. 1, issue 2, 1-34 (Feb. 2008)).

¹³ Sex Selection Toolkit, *supra* note 8, at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ H.R. 1822 § 3(a).

¹⁷ Georgia, Arizona, Mississippi, New Jersey, and Idaho's bills all contain such provisions.

¹⁸ Idaho, Minnesota and Arizona's bills establish reporting requirements.