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

IN THE HOUSE OF REPRESENTATIVES

January 3, 2017

Mr. Franks of Arizona 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Prenatal Non-discrimination Act (PRENDA) of 2017”.

SEC. 2. FINDINGS AND CONSTITUTIONAL AUTHORITY.

(a) FINDINGS.—The Congress makes the following 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 sex selection 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 2d or 3rd trimester of pregnancy, often 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 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 laws of 46 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 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 2006 Zogby International poll, 86 percent of Americans agreed that sex-selection abortion should be illegal, yet only eight States proscribe sex-selection abortion. In a 2012 poll conducted by the Charlotte Lozier Institute, 77 percent of Americans agreed that sex-selection abortion should be illegal.
(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 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. More recent 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 resolution 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. The American Congress of Obstetricians and Gynecologists ("ACOG") stated in its 2007 Ethics Committee Opinion, Number 360, that sex selection is inappropriate because it "ultimately supports sexist practices". The American Society of Reproductive Medicine ("ASRM") published a 2004 Ethics Committee Opinion, noting that central to the controversy of sex selection in the use of assisted reproductive technology ("ART") is the potential for "inherent gender discrimination", . . . the "risk of psychological harm to sex-selected offspring (i.e., by placing on them expectations that are too high)", . . . and "reinforcement of gender bias in society as a whole". Sex selection in ART remains "vulnerable to the judgment that no matter what its basis, [the method] identifies gender as a reason to value one person over another, and it supports socially constructed stereotypes of what gender means". In doing so, it not only 

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possibilities of unfair discrimination, but may trivialize human reproduction by making it depend on the selection of nonessential features of offspring”. The ASRM ethics opinion continues, “ongoing problems with the status of women in the United States make it necessary to take account of concerns for the impact of sex-selection on goals of gender equality”. The American Association of Pro-Life Obstetricians and Gynecologists, an organization with hundreds of members—many of whom are former abortionists—makes the following declaration: “Sex selection abortions are more graphic examples of the damage that abortion inflicts on women. In addition to increasing premature labor in subsequent pregnancies, increasing suicide and major depression, and increasing the risk of breast cancer in teens who abort their first pregnancy and delay childbearing, sex selection abortions are often targeted at fetuses simply because the fetus is female. As physicians who care for both the mother and her unborn child, the American Association of Pro-Life Obstetricians and Gynecologists vigorously opposes aborting fetuses because of their gender.”. The President’s Council
on Bioethics published a Working Paper stating
the council’s belief that society’s respect for re-
productive freedom does not prohibit the regu-
lation or prohibition of “sex control”, defined as
the use of various medical technologies to
choose the sex of one’s child. The publication
expresses concern that “sex control might lead
to . . . dehumanization and a new eugenics”.

(L)(i) Sex-selection abortions are often co-
erced, and therefore, the opposite of “choice”.
Researchers at the University of California at
Berkeley and the University of California at
San Francisco completed a study of Indian-
American women who had undergone sex-selec-
tion abortions in the United States. The study
found that sex-selection abortions are often the
product of violent coercion.

(ii) Women who carried a female unborn
child to term said they were subject to varying
degrees of verbal and physical abuse, which
may be to the point of actually inducing a sex-
selection abortion. A woman may be denied
food, water, and rest to induce an abortion
where the family determines that the woman is
carrying a female unborn child. Some women
described being hit, pushed, choked and kicked in the abdomen in a husband’s attempt to forcibly terminate a female unborn child. Pregnancy is already a vulnerable time for women; the most common cause of death for pregnant women in the United States is homicide, often at the hands of the unborn child’s father.

(iii) The study concluded that sex selection can be the product of an abusive environment created by marital partners, an extended family, or both. One-third of the women in the study reported that a history of family violence exacerbated when they did not give birth to a son. Notably, because the researchers had reason to fear for the participants’ exposure to marital violence, all subjects received information on local South Asian women’s organizations offering assistance for victims of family violence. The failure to bear a son is a serious matter; the birth of a daughter could result in violence or a brutal death for the mother at the hands of the father and mother-in-law. For example, photojournalist Walter Astrada’s renowned documentary tells the story of an Indian woman who was tortured and abandoned
by her husband and mother-in-law for refusing to abort twin girls. Sex-selection abortion has long been considered a form of violence against women, and the study proved that both the women and the unborn daughter are victims of violence where sex-selection abortion is legally available but not sought by the mother. Forty percent of the women had terminated prior pregnancies when they learned that the unborn child was female. Of the women who discovered they were pregnant with a girl during the interview period, 89 percent underwent a sex-selection abortion. Among those that did not abort their unborn daughters, 100 percent expressed ambivalence about prior sex-selection abortions. Further, 100 percent cited physical and psychological trauma from the past abortions as reasons for not seeking another. Most tragically, 100 percent expressed guilt, shame and sadness over their inability to “save” the daughters they had aborted.

(iv) Coercive sex-selection abortions are suspected in other western countries as well. Following a 2012 investigation of sex-selection abortion in the United Kingdom, Dr. Tony Fal-
coner, President of the Royal College of Obstetrics and Gynaecology, raised the specter that women may be experiencing violence and coercion to force sex-selection abortions.

(v) A growing body of research documents the relationship between intimate partner violence and reproductive coercion.

(M) Sex-selection abortion harms women. Researchers at the University of California found that women in the United States who undergo sex-selection abortions are at increased risk for psychological and physical morbidity, documented by their descriptions of depression, anxiety, chronic pain, physical abuse, closely spaced pregnancies, and “forced abortions”. Further, 100 percent of the study participants who chose to carry unborn baby girls cited physical and psychological trauma from past abortions as reasons for not seeking another. Similarly, Indian-Canadian counselor, Aruna Papp, stated publicly that in her 30 years of experience treating Indian-Canadian women, she has found that sex-selection abortion is the leading cause of mental illness among women in the Punjabi Health Services, Peel region, and
the leading cause of depression and attempted
suicide in the South Asian Settlement Services
in Scarborough. Some of Papp’s patients ob-
tained their sex-selection abortions in Michigan
and New York. Papp also reports “many other
physical ailments that are related to two, three,
or four abortions”.

(N) Sex-selection abortion results in an un-
natural sex-ratio imbalance. An unnatural sex-
ratio imbalance is undesirable, due to the in-
ability 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 in-
creased 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 con-
sequent increase in kidnapping and other vio-
lent crime.

(O) Sex-selection abortions have the effect
of diminishing the representation of women in
the American population, and therefore, the
American electorate.
(P) 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 funda-
mental human rights and civil rights as the ma-
jority.

(B) United States law prohibits discrimi-
nation on the basis of race in various contexts,
including employment, education, housing,
health insurance coverage, and athletics.

(C) A “race-selection abortion” is an abor-
tion 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 vio-
ience, predicated on race discrimination. By
definition, race-selection abortions do not implic-
ate the health of mother of the unborn, but in-
stead are elective procedures motivated by race
bias.

(D) A thorough review of the history of the
American population control movement and its
close affiliation with the American Eugenics Society reveals a history of targeting certain racial or ethnic groups for “family planning”. This history likely contributes to the current statistic that a Black baby is five times as likely to be aborted as a White baby, often in a federally subsidized clinic.

(E) Abortion is the leading cause of death in the Black community. With approximately 450,000 Black abortions per year, more Black Americans lose their lives each year to abortion than to cancer, heart disease, diabetes, AIDS, and violence combined. These statistics are derived by comparing the abortion statistics of the Alan Guttmacher Institute (formerly the research arm of Planned Parenthood) to the National Vital Statistics annual reports showing the number of deaths by cause and race. The numbers for each of these variables have remained relatively constant from year to year, since 2005.

(F) Only one State, Arizona, has enacted law to proscribe the performance of race-selection abortions.
(G) Race-selection abortions have the effect of diminishing the number of minorities in the American population and therefore, the American electorate.

(H) Race-selection abortion reinforces racial discrimination and has no place in a civilized society.

(3) GENERAL FINDINGS.—

(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 abortions trivialize the value of the unborn on the basis of sex or race, reinforcing sex and race discrimination, and coarsening society to the humanity of all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, Congress has a compelling interest in acting—indeed it must act—to prohibit sex-selection abortion and race-selection abortion.

(b) CONSTITUTIONAL AUTHORITY.—In accordance with the above findings, Congress enacts the following pursuant to Congress’ power under—

(1) the Commerce Clause;

(2) section 2 of the 13th Amendment;

(3) section 5 of the 14th Amendment, including the power to enforce the prohibition on government action denying equal protection of the laws; and
(4) section 8 of article I to make all laws necessary and proper for the carrying into execution of powers vested by the Constitution in the Government of the United States.

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

(a) IN GENERAL.—Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

§ 250. Discrimination against the unborn on the basis of race or sex

“(a) IN GENERAL.—Whoever knowingly—

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

“(2) uses force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing a sex-selection or race-selection abortion;

“(3) solicits or accepts funds for the performance of a sex-selection abortion or a race-selection abortion; or
“(4) transports a woman into the United States or across a State line for the purpose of obtaining a sex-selection abortion or race-selection abortion, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.

“(b) Civil Remedies.—

“(1) Civil action by woman on whom abortion is performed.—A woman upon whom an abortion has been performed or attempted in violation of subsection (a)(2) may in a civil action against any person who engaged in a violation of subsection (a) obtain appropriate relief.

“(2) Civil action by relatives.—The father of an unborn child who is the subject of an abortion performed or attempted in violation of subsection (a), or a maternal grandparent of the unborn child if the pregnant woman is an unemancipated minor, may in a civil action against any person who engaged in the violation, obtain appropriate relief, unless the pregnancy or abortion resulted from the plaintiff’s criminal conduct or the plaintiff consented to the abortion.

“(3) Appropriate relief.—Appropriate relief in a civil action under this subsection includes—
“(A) objectively verifiable money damages for all injuries, psychological and physical, including loss of companionship and support, occasioned by the violation of this section; and

“(B) punitive damages.

“(4) INJUNCTIVE RELIEF.—

“(A) IN GENERAL.—A qualified plaintiff may in a civil action obtain injunctive relief to prevent an abortion provider from performing or attempting further abortions in violation of this section.

“(B) DEFINITION.—In this paragraph the term ‘qualified plaintiff’ means—

“(i) a woman upon whom an abortion is performed or attempted in violation of this section;

“(ii) a maternal grandparent of the unborn child if the woman upon whom an abortion is performed or attempted in violation of this section is an unemancipated minor;

“(iii) the father of an unborn child who is the subject of an abortion performed or attempted in violation of subsection (a); or
“(iv) the Attorney General.

“(5) ATTORNEYS FEES FOR PLAINTIFF.—The court shall award a reasonable attorney’s fee as part of the costs to a prevailing plaintiff in a civil action under this subsection.

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

“(d) LOSS OF FEDERAL FUNDING.—A violation of subsection (a) shall be deemed for the purposes of title VI of the Civil Rights Act of 1964 to be discrimination prohibited by section 601 of that Act.

“(e) REPORTING REQUIREMENT.—A physician, physician’s assistant, nurse, counselor, or other medical or mental health professional shall report known or suspected violations of any of this section to appropriate law enforcement authorities. Whoever violates this requirement shall be fined under this title or imprisoned not more than 1 year, or both.

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

“(g) PROTECTION OF PRIVACY IN COURT PROCEEDINGS.—

“(1) IN GENERAL.—Except to the extent the Constitution or other similarly compelling reason requires, in every civil or criminal action under this section, the court shall make such orders as are necessary to protect the anonymity of any woman upon whom an abortion has been performed or attempted if she does not give her written consent to such disclosure. Such orders may be made upon motion, but shall be made sua sponte if not otherwise sought by a party.

“(2) ORDERS TO PARTIES, WITNESSES, AND COUNSEL.—The court shall issue appropriate orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the identity of the woman described in paragraph (1) from public disclosure.

“(3) PSEUDONYM REQUIRED.—In the absence of written consent of the woman upon whom an abortion has been performed or attempted, any
party, other than a public official, who brings an ac-
tion under this section shall do so under a pseu-
donym.

“(4) LIMITATION.—This subsection shall not be
construed to conceal the identity of the plaintiff or
of witnesses from the defendant or from attorneys
for the defendant.

“(h) DEFINITION.—In this section—

“(1) the term ‘abortion’ means the act of using
or prescribing any instrument, medicine, drug, or
any other substance, device, or means with the in-
tent to terminate the clinically diagnosable preg-
nancy of a woman, with knowledge that the termi-
nation by those means will with reasonable likelihood
cause the death of the unborn child, unless the act
is done with the intent to—

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

“(B) remove a dead unborn child caused
by spontaneous abortion; or

“(C) remove an ectopic pregnancy;

“(2) the term ‘sex-selection abortion’ means an
abortion undertaken for purposes of eliminating an
unborn child of an undesired sex; and
“(3) the term ‘race-selection abortion’ means an abortion performed for purposes of eliminating an unborn child because the child or a parent of the child is of an undesired race.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 18, United States Code, is amended by adding after the item relating to section 249 the following new item:

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

SEC. 4. SEVERABILITY.

If any portion of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the portions or applications of this Act which can be given effect without the invalid portion or application.