

6-2014

# Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States

Brian Citro

*University of Chicago Law School*

Jeff Gilson

*University of Chicago Law School*

Sital Kalantry

*Cornell Law School, sk49@cornell.edu*

Kelsey Stricker

*University of Chicago Law School*

University of Chicago Law School. International Human Rights Clinic

*See next page for additional authors*

Follow this and additional works at: <http://scholarship.law.cornell.edu/facpub>



Part of the [Law and Gender Commons](#), and the [Women Commons](#)

---

## Recommended Citation

Citro, Brian; Gilson, Jeff; Kalantry, Sital; Stricker, Kelsey; University of Chicago Law School. International Human Rights Clinic; National Asian Pacific American Women's Forum (U.S.); and Advancing New Standards in Reproductive Health (Organization), "Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States" (2014). *Cornell Law Faculty Publications*. Paper 1399. <http://scholarship.law.cornell.edu/facpub/1399>

This Published Papers is brought to you for free and open access by the Faculty Scholarship at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Faculty Publications by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact [jmp8@cornell.edu](mailto:jmp8@cornell.edu).

---

**Authors**

Brian Citro, Jeff Gilson, Sital Kalantry, Kelsey Stricker, University of Chicago Law School. International Human Rights Clinic, National Asian Pacific American Women's Forum (U.S.), and Advancing New Standards in Reproductive Health (Organization)

# Replacing Myths with Facts:

**SEX-SELECTIVE ABORTION  
LAWS IN THE UNITED STATES**

THE UNIVERSITY OF  
 **CHICAGO**  
THE LAW SCHOOL  
INTERNATIONAL HUMAN  
RIGHTS CLINIC

 **napawf**  
NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM

**ANSIRH**  
ADVANCING NEW STANDARDS IN REPRODUCTIVE HEALTH 

## **A PROJECT OF:**

### *International Human Rights Clinic, University of Chicago Law School*

The International Human Rights Clinic at the University of Chicago Law School works for the promotion of social and economic justice in the United States and globally. The Clinic uses international human rights laws and norms as well as other substantive laws and strategies to draw attention to human rights violations and to develop practical solutions to those problems using interdisciplinary and empirical research methodologies. The Clinic faculty and students work on projects in collaboration with non-profit organizations to advance social justice and teach human rights law and advocacy skills.

### *National Asian Pacific American Women's Forum*

The National Asian Pacific American Women's Forum (NAPAWF) is the only multi-issue, progressive, community organizing and policy advocacy organization for Asian and Pacific Islander women and girls in the United States. NAPAWF's mission is to build a movement to advance social justice and human rights for Asian & Pacific Islander women and girls.

### *Advancing New Standards in Reproductive Health*

Advancing New Standards in Reproductive Health (ANSIRH) works to ensure that reproductive health care and policy are grounded in evidence. ANSIRH's multi-disciplinary team includes clinicians, researchers and scholars in the fields of sociology, demography, anthropology, medicine, nursing, public health and law. ANSIRH is a program of the Bixby Center for Global Reproductive Health at the University of California, San Francisco.

# Replacing Myths with Facts:

**SEX-SELECTIVE ABORTION  
LAWS IN THE UNITED STATES**

---

**JUNE 2014**

THE UNIVERSITY OF  
 CHICAGO  
THE LAW SCHOOL  
INTERNATIONAL HUMAN  
RIGHTS CLINIC

 **napawf**  
NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM

**ANSIRH**  
ADVANCING NEW STANDARDS IN REPRODUCTIVE HEALTH 

# Acknowledgements

## PROJECT DIRECTORS

Sital Kalantry, *Clinical Professor of Law and Director, International Human Rights Clinic, University of Chicago Law School*

Miriam Yeung, *Executive Director, National Asian Pacific American Women's Forum*

## AUTHORS

Brian Citro, *Clinical Lecturer in Law and Clinic Fellow, International Human Rights Clinic, University of Chicago Law School*

Jeff Gilson, *JD Candidate 2014, University of Chicago Law School*

Sital Kalantry, *Clinical Professor of Law and Director, International Human Rights Clinic, University of Chicago Law School*

Kelsey Stricker, *JD Candidate 2014, University of Chicago Law School*

## EDITORS

Sujatha Jesudason, *Assistant Professor, University of California, San Francisco*

Shivana Jorwar, *Reproductive Justice Program Director, National American Pacific Asian Women's Forum*

Alexander Persuad, *PhD Candidate, Department of Economics, University of Michigan*

Arindam Nandi, *Fellow, Center for Disease Dynamics, Economics and Policy*

Frederick Watson, *JD Candidate 2014, University of Chicago Law School*

## DATA ANALYSIS

Arindam Nandi, *Fellow, Center for Disease Dynamics, Economics and Policy*

Alexander Persuad, *PhD Candidate, Department of Economics, University of Michigan*

## RESEARCH ASSISTANTS

Viren Bansal, *BA, LLB (Hons) Candidate 2017, Jindal Global Law School*

Lindsay Gus, *JD Candidate 2016, University of Chicago Law School*

Peter John Shaji, *BA, LLB (Hons), Jindal Global Law School*

Shivangi Sud, *BA, LLB (Hons) Candidate 2017, Jindal Global Law School*

Marlow Svatek, *JD Candidate 2016, University of Chicago Law School*

We would like to thank Dipika Jain, Associate Professor, Associate Dean (Academic Affairs) and Executive Director, Centre for Health Law, Ethics and Technology, Jindal Global Law School, and Kimberly Rhoten, Research Fellow, Jindal Global Law School, for their insightful comments on an earlier draft of this report and the Coase-Sandor Institute for Law and Economics at the University of Chicago Law School for conducting a replication study.

We would also like to thank the following individuals we met with in New Delhi and Haryana India: Satish Agnihotri, Director General Defence Acquisitions, Ministry of Defence; Sona Arya and Sudha Nautiyal, Women and Child Development Project Officer and Gender Convergence Officer, National Mission for the Empowerment of Women, Ministry of Women and Child Development; Asmita Basu, Lawyer and Consultant on Gender and Human Rights; Ravi Duggal, Program Officer, International Budget Partnership; Martha Farrell, Nandita Pradhan Bhatt and Julie Thomas, Society for Participatory Research in Asia (PRIA); V. Mohini Giri, Chairperson, Guild of Service; Ruchira Gupta, Apne Aap Worldwide; Dr. Amar Jesani, Trustee, Anusandhan Trust, and Editor, Indian Journal of Medical Ethics; Mary E. John, Senior Fellow, Centre for Women's Development Studies; Poonam Kathuria, Founder and Director, Society for Women's Action and Training Initiative (SWATI); Subhash Mendhapurkar, Founder and Director, Society for Social Upliftment Through Rural Action (SUTRA); Geetha Nambisan, Co-director and Director of Programs Management, Jagori; Bijayalaxmi Nanda, Professor of Political Theory and Gender Studies, Department of Political Science, University of Delhi; Rajni Palriwala, Professor of Sociology, Delhi School of Economics, University of Delhi; Tulsi Patel, Professor of Sociology, Department of Sociology, University of Delhi; Vibhuti Patel, Professor and Head, University Department of Economics, SNDT Women's University, Mumbai; Rajbala and Suresh, Anganwadi workers, Haryana, India; Saraswati Raju, Professor in Social Geography, Center for the Study of Regional Development, Jawaharlal Nehru University; Anubha Rastogi, Lawyer, Mumbai, India; Ena Singh, Assistant Representative, United Nations Population Fund (UNFPA), India; Deepa Venkatachalam, Programme Co-ordinator, Sama: Resource Group for Women and Health.

# Table of Contents

I. Executive Summary .....	1
II. Methodology .....	4
1. Desk Research .....	4
2. Quantitative Analysis .....	5
3. In-Country Interviews .....	5
III. Myths and Facts About Sex-Selective Abortion Laws .....	6
Myth #1 Male-biased sex ratios at birth are proof that sex-selective abortions are occurring. ....	6
Myth #2 India and China are the only countries where male-biased sex ratios exist. ....	8
Myth #3 The United States is one of the few countries in the world that does not ban sex-selective abortion. ....	10
Myth #4 Laws banning sex-selective abortion are an effective way to prevent sex selection and adjust male-biased sex ratios at birth. ....	12
Myth #5 Empirical studies of sex ratios at birth of foreign-born Chinese, Indians and Koreans prove that sex-selective abortions based on son preference are occurring in the United States. ....	15
Myth #6 The primary motivation behind laws banning sex-selective abortion in the United States is to prevent gender-based discrimination. ....	21
IV. Conclusion .....	27
Appendix	
Summary of Laws Banning Sex-Selective Abortion in the United States .....	29
Endnotes .....	31



## **LIST OF FIGURES**

Figure #1: Jurisdictions that Explicitly Prohibit Sex-Selective Abortion

Figure #2: Sex Ratios at Birth of Asian Americans in IL and Border States Before and After IL Sex-Selective Abortion Ban in 1984

Figure #3: Sex Ratios at Birth of Asian Americans in PA and Border States Before and After PA Sex-Selective Abortion Ban in 1989

Figure #4: Sex Ratios at Birth of Total Population in IL and Border States Before and After IL Sex-Selective Abortion Ban in 1984

Figure #5: Sex Ratios at Birth of Total Population in PA and Border States Before and After PA Sex-Selective Abortion Ban in 1989

Figure #6: Sex Ratios at Birth of US-Born Whites, All Asian Americans, and Foreign-Born Chinese, Indians and Koreans (as a group and each separately)

Figure #7: Sex Ratios at Birth of All Asian Americans and US-Born Whites

## **LIST OF TABLES**

Table #1: Countries with Sex Ratios at Birth Above the Standard Range

Table #2: Countries with Sex Ratios at Birth Below the Standard Range

Table #3: Asian Populations in the United States

Table #4: Gender Preference for First and Only Born Children of Chinese, Indian and Korean Americans

Table #5: Voting Records on Recently Enacted Sex-Selective Abortion Bans

## **LIST OF BOXES**

Box #1: Explaining Sex Ratios

Box #2: Sex Ratios in South Korea Improve with Economic Development and Evolving Norms

Box #3: A Closer Look at Other Studies on Sex Selection in the United States

Box #4: Content of Enacted and Proposed Laws Banning Sex-Selective Abortion

Box #5: A Focus on Declining Sex Ratios in India and a Comparison to the United States

Box #6: Skewed Sex Ratios at Birth and Son Preference in China

# I. Executive Summary

Sex selection is the practice of attempting to control the sex of one's offspring in order to achieve a desired sex.<sup>1</sup> One method of sex selection is sex-selective abortion. Laws banning sex-selective abortion are proliferating in the United States. Eight states have enacted laws prohibiting sex-selective abortion.<sup>2</sup> Twenty-one states and the federal government have considered such laws since 2009. Those laws prohibit the performance of an abortion if sought based on the sex of the fetus and provide for both criminal and civil penalties in most cases.

A great deal of misinformation exists regarding sex selection in the United States. We have identified six inaccuracies commonly associated with sex-selective abortion and laws prohibiting it. They appear, among other places, in statements made by legislators, testimony submitted to legislatures, and reports issued by legislative committees that have considered or adopted laws banning sex-selective abortion.<sup>3</sup> We present each piece of inaccurate information as a “myth.” This Report draws on legal research, empirical analysis of U.S. birth data, field-work, and an extensive review of scholarly publications in social sciences, law and other disciplines to replace these myths with facts.

Legislators and proponents of sex-selective abortion bans have consistently referred to the existence of male-biased sex ratios and the practice of sex selection in other parts of the world. Discussions have focused on the problem of “missing women” in China and India in particular. However, China and India are not the only countries with male-biased sex ratios. On the contrary, the two countries with the highest sex ratios at birth are Liechtenstein and Armenia (see discussion of Myth #2 below). Both have higher sex ratios at birth than China and India.

Legislators and major news outlets have stated that the United States is one of the few countries that does not prohibit abortion for sex selection purposes. However, the eight states in the United States that currently ban sex-selective abortion are among a small minority of places in the world where it is banned. Only four other countries explicitly prohibit sex-selective abortion: China, Kosovo, Nepal and Vietnam (see discussion of Myth #3 below). Instead, many countries that are concerned about sex selection prohibit the use of technology to sex select prior to implantation of the embryo in the uterus.

The main empirical support for the view that Asian Americans are obtaining sex-selective abortions based on son preference in the United States is from a study by economists Douglas Almond and Lena Edlund published in 2008. That study, using United States census data from 2000, found that when foreign-born Chinese, Indians and Koreans have two girls, the sex ratios at the third birth in those families is skewed towards boys. However, in analyzing more recent data from the 2007 to 2011 American Community Survey (ACS), we found that the sex ratios at birth of foreign-born Chinese, Indians and Koreans are *not* male-biased when all their births are taken into account. In fact, foreign-born Chinese, Indians and Koreans have proportionally *more* girls than white Americans (see discussion of Myth #5 below).

Proponents of sex-selective abortion bans claim they are needed to “prohibit discrimination against the unborn on the basis of sex” and to stop the practice of sex selection among Asian Americans in the United States.<sup>4</sup> As noted, sex-selective abortion is only one among several methods available to select the sex of one’s offspring. None of the laws enacted or proposed in the United States prohibit methods other than abortion, such as sperm sorting or preimplantation genetic diagnosis (see discussion of Myth #1 below). Instead, the laws focus solely on abortion. Moreover, sex-selective abortion bans have not been shown to impact sex ratios in the United States. On the contrary, our study shows that laws in Illinois and Pennsylvania—adopted in 1984 and 1989, respectively—are not associated with changes in sex ratios at birth in those states (see discussion of Myth #4 below).

Sex-selective abortion laws are part of the legislative campaign of groups opposed to reproductive rights. The laws are generally proposed by legislators who are anti-abortion. Our analysis found that over 90% of Republican representatives in the six states that enacted bans in the last four years voted for the laws. In contrast, less than 10% of Democrats voted for the bans in four of the six states. In the two states where sex-selective abortion bans achieved meaningful support from Democrats—Oklahoma and South Dakota—laws that restrict access to abortion consistently receive bipartisan support (see discussion of Myth #6 below).

## SIX MYTHS AND FACTS ABOUT SEX SELECTION IN THE UNITED STATES

### MYTH #1

Male-biased sex ratios at birth are proof that sex-selective abortions are occurring.

### FACT #1

Male-biased sex ratios at birth do not provide proof that sex-selective abortions are occurring because sex selection can be achieved by artificially inseminating only sperm with the X or Y chromosome or by implanting embryos of the desired sex into the uterus.

### MYTH #2

India and China are the only countries where male-biased sex ratios exist.

### FACT #2

Male-biased sex ratios at birth can be found in many countries throughout the world, including those with predominantly white populations. The countries with the highest male-biased sex ratios in the world are Liechtenstein and Armenia. Both countries have higher sex ratios than India and China.

**MYTH  
#3**

The United States is one of the few countries in the world that does not ban sex-selective abortion.

**FACT  
#3**

Only four countries other than the United States have laws explicitly prohibiting sex-selective abortion: China, Kosovo, Nepal and Vietnam. Many countries that are concerned about sex selection regulate the practice only by prohibiting sex selection through preconception and preimplantation techniques.

**MYTH  
#4**

Laws banning sex-selective abortion are an effective way to prevent sex selection and adjust male-biased sex ratios at birth.

**FACT  
#4**

Our empirical analysis of sex ratios at birth five years before and after sex-selective abortion bans were enacted in Illinois and Pennsylvania indicates that the bans were not associated with changes in sex ratios at birth.

**MYTH  
#5**

Empirical studies of sex ratios at birth of foreign-born Chinese, Indians and Koreans prove that sex-selective abortions based on son preference are occurring in the United States.

**FACT  
#5**

An analysis of more recent national data of sex ratios at birth of foreign-born Chinese, Indians and Koreans shows that these groups have *more* girls overall than white Americans.

**MYTH  
#6**

The primary motivation behind laws banning sex-selective abortion in the United States is to prevent gender-based discrimination.

**FACT  
#6**

Restricting access to abortion is the primary motivation for sex-selective abortion bans. All the bans have been proposed and supported by people who oppose abortion generally.

## II. Methodology

The authors and collaborators of this report (1) conducted desk research, (2) analyzed quantitative data from the American Community Survey (ACS) from 2007 to 2011 and the National Center for Health Statistics (NCHS) from 1979 to 1993 and (3) conducted in-country interviews of physicians, lawyers, government officials, social activists and academics in India.

### 1. DESK RESEARCH

The authors conducted extensive desk research on laws addressing the practice of sex selection, sex-selective abortion and sex ratios in the United States and abroad. This included reading enacted and proposed statutes, as well as secondary sources, such as legal-academic articles and social science materials. The authors researched the social, cultural, economic and anthropological underpinnings of the practice of sex selection throughout the world, with a focus on India. This included reading articles and books in the social sciences, as well as newspapers and other popular media sources. The authors also read transcripts, listened to audio recordings, and viewed videos of legislative hearings in state legislatures and the United States Congress on laws banning sex-selective abortion.

In determining what countries explicitly prohibit sex-selective abortion, student research assistants undertook the following research: (1) consulted the Center for Reproductive Rights' "The World's Abortion Laws Map 2013,"<sup>5</sup> which identifies countries that prohibit sex-selective abortion; (2) reviewed the text of abortion laws posted on the Harvard School of Public Health's "Abortion Laws of the World Database,"<sup>6</sup> which contains abortion laws from most (but not all) countries in the world; (3) reviewed the United Nation's "Population Division Abortion Policies: A Global Review,"<sup>7</sup> which contains a description of world abortion laws but not the actual text of the laws; (4) conducted searches in library databases for articles that mention abortion laws in specific countries; and (5) conducted searches on Google aimed at finding the text of abortion laws in countries that were not in the Harvard database. Of the abortion laws we reviewed, we have listed countries as banning sex-selective abortion if the law explicitly prohibits sex-selective abortion.

In determining which countries prohibit sex selection prior to implantation and sex determination tests, student research assistants conducted the following research: (1) consulted a database that identifies certain countries that have laws regulating the use of assisted reproductive technologies;<sup>8</sup> (2) conducted searches in library databases for articles that discuss laws relating to assisted reproductive technologies in specific countries; and (3) conducted searches on Google for every country in the world to find references to whether those countries regulate assisted reproductive technologies.

Student research assistants also collected data on the voting records of state legislatures that have passed sex-selective abortion bans in the last four years. In conducting this research, they first consulted Project Vote Smart's database of state voting records.<sup>9</sup> For sex-selective abortion bans

not included in that database—those of Oklahoma and South Dakota—they relied on the state legislatures’ journals, which are accessible through the legislatures’ websites.

## **2. QUANTITATIVE ANALYSIS**

Arindam Nandi and Alexander Persaud, in collaboration with the authors, analyzed data related to births in the United States from the ACS and the NCHS. Nandi used NCHS data to conduct a difference-in-differences analysis to compare sex ratios at birth of Asians and the total populations in Illinois, Pennsylvania and their border states before and after sex-selective abortion bans were enacted in Illinois in 1984 and Pennsylvania in 1989. Persaud used pooled ACS data on births from 2007 to 2011 to find sex ratios at birth for whites and different groups of Asian Americans. Among other things, the analysis took into account the birth place and ethnicity of the parents and the age of the children. Sex ratios at birth were determined for first, second and third births, accounting for the sex of previous children.<sup>10</sup>

## **3. IN-COUNTRY INTERVIEWS**

In December 2013, some of the authors conducted approximately 20 interviews in and around New Delhi, India, with physicians, lawyers, government officials, social activists, and academics. The interviews were focused on understanding the legal regime regulating sex determination procedures and identifying the factors associated with declining child sex ratios, the practice of sex selection and the related phenomenon of son preference in India. Interviews lasted from 30 minutes to an hour and were conducted in English, with the exception of interviews with community members, which were conducted in Hindi with a translator.

# III. Myths and Facts About Sex-Selective Abortion Laws

## MYTH #1

Male-biased sex ratios at birth are proof that sex-selective abortions are occurring.

*“What is causing the skewed ratio: abortion. If the male number in the sex ratio is above 106, it means that couples are having abortions when they find out the mother is carrying a girl.”*

—Quoted in a submission from United States Representative Trent Franks (R-AZ) to a hearing before the Subcommittee on the Constitution of the Committee on the Judiciary.<sup>11</sup>

*“You cannot explain the male to female demographics that are occurring in birth ratios in some ethnic groups here in the United States, and this is widespread, unless you account for sex-selective abortion . . . .”*

—Testimony of Spencer Cody, Vice President of South Dakota Right to Life, to the South Dakota House of Representatives.<sup>12</sup>

## FACT #1

Male-biased sex ratios at birth do not provide proof that sex-selective abortions are occurring because sex selection can be achieved by artificially inseminating only sperm with the X or Y chromosome or by implanting embryos of the desired sex into the uterus.

Eight states in the United States currently have laws prohibiting sex-selective abortion.<sup>13</sup> Twenty-one states and the United States Congress have considered bills banning sex-selective abortion since 2009.<sup>14</sup> Proponents of the bans claim they are trying to curtail the “growing trend” of sex selection in the United States enabled by the “rise” of the “sex-selection industry.”<sup>15</sup> Support for the laws is driven by reliance on a few empirical studies of sex ratios at birth of certain Asian groups in the United States. For example, a report prepared by the United States Congress asserts that “U.S. census data and national vital statistics show . . . [c]ertain communities within the United States are achieving sex ratios that are unnatural and statistically impossible without medical intervention.”<sup>16</sup> The studies relied on to support sex-selective abortion bans are discussed below (see Myth #5), along with our analysis of more recent birth data in the United States.

The standard range of male to female sex ratios at birth is believed to be approximately 1.03 to 1.07 males for every female.<sup>17</sup> Put another way, standard sex ratios at birth range from 103 to 107 males for every 100 females (see Box #1 below). However, the standard range may be larger than is commonly accepted. Some studies have shown that sex ratios vary by racial group, by the age of the mother, and by geographic region even when parents are not using abortion or other means to sex select (see discussion of Myth #2 below).<sup>18</sup> The sex ratio at birth in the United States for the

entire population is within the standard range at 105 boys for every 100 girls.<sup>19</sup> Deviations from the standard range of sex ratios at birth are thought to provide evidence that sex-selective abortions have occurred in a given population. However, skewed sex ratios do not provide definitive evidence of sex-selective abortion, since sex selection can be conducted through various methods, both prior to conception and prior to implantation of the embryo in the uterus.

Families can sex select through artificial insemination whereby only sperm that will produce the desired sex are allowed to fertilize the egg. This process is known as sperm sorting.<sup>20</sup> Sex selection can also be achieved by a technique known as preimplantation genetic diagnosis (PGD).<sup>21</sup> Medical professionals remove eggs from a woman and fertilize them outside of the body using a procedure called in-vitro fertilization (IVF).<sup>22</sup> One or two cells are removed from the embryo three days after fertilization, and the sex of the embryo is determined through chromosomal analysis of the removed cells using PGD.<sup>23</sup> Only the embryos of the desired sex are implanted in the uterus. These sex selection procedures are legally available in the United States and, indeed, fertility clinics actively promote their availability.<sup>24</sup> Three of the four states with the largest Asian populations in the United States—California, New York and Texas<sup>25</sup>—also have the most fertility clinics in the country.<sup>26</sup> Notwithstanding this, none of the laws that ban sex-selective abortion in the United States prohibit sex selection prior to conception or implantation.

### **BOX #1: Explaining Sex Ratios**

Unless otherwise stated, use of the term “sex ratio” in this Report refers to sex ratios at birth. Sex ratios at birth are calculated by dividing the number of boys born in a given population at any given time by the number of girls born. A sex ratio at birth of 1.07 means 107 boys were born per 100 girls. It is believed that, absent manipulation, the standard range of male to female sex ratios at birth is approximately 1.03 to 1.07 males for every female, with an average of 1.05.<sup>27</sup> There is thus a natural tendency for women to give birth to more boys than girls. Some scientists believe this is an evolutionary adaptation to the facts that male infants suffer more frequent health complications than female infants and that adult men take more risks, suffer from frequent health problems and generally die younger than adult women.<sup>28</sup> However, as noted above, there may be a natural variation in sex ratios at birth on the basis of race, age of the parents and possibly other factors. Thus, sex selection is not always the cause of male- or female-biased sex ratios at birth.



## MYTH #2

India and China are the only countries where male-biased sex ratios exist.

*“Countries with long-standing experience with sex-selection abortion [are] the Republic of India . . . and the People’s Republic of China . . . .”*

—Prenatal Nondiscrimination Act (PRENDA) of 2013.<sup>29</sup>

## FACT #2

Male-biased sex ratios at birth can be found in many countries throughout the world, including those with predominantly white populations. The countries with the highest male-biased sex ratios in the world are Liechtenstein and Armenia. Both countries have higher sex ratios than India and China.

Proponents of sex-selective abortion bans in the United States point to India and China as countries where male-biased sex ratios exist and sex-selective abortions are performed.<sup>30</sup> However, according to the United States Central Intelligence Agency’s “World Factbook,” Liechtenstein has the highest male-biased sex ratio at birth in the world at 1.26.<sup>31</sup> This is so despite the fact that Liechtenstein is a European country in which abortion is banned all together.<sup>32</sup> Several countries in the Caucasus region have recently experienced increases in sex ratios at birth. For example, the sex ratio at birth in Armenia is 1.14, higher than both India and China.<sup>33</sup> In Azerbaijan, the sex ratio is 1.12, well outside the standard range.<sup>34</sup> Nevertheless, proponents of sex-selective abortion bans do not mention skewed sex ratios as a problem in these countries or among the immigrant groups that come from these countries to the United States.

Thirteen countries have sex ratios at birth that are skewed in favor of males above the standard range (see Table #1 below). Six of these countries with higher than normal sex ratios at birth are in Europe. Of the remaining countries, four are in Asia, two are in the Caucasus region, and one is in the Caribbean. Eleven countries—almost all of which are in Africa and the Caribbean—have sex ratios at birth below 1.03, indicating more girls than boys are born on average, in comparison to the standard range (see Table #2 below). Thus, although India and China are consistently referred to in legislative debates over sex-selective abortion bans, male-biased sex ratios can be found in many countries throughout the world, including those with predominantly white populations.

**TABLE #1:** Countries with Sex Ratios at Birth **Above** the Standard Range

Country	Sex ratio at birth
Liechtenstein	1.26
Armenia	1.14
Hong Kong	1.13
Azerbaijan	1.12
India	1.12
Vietnam	1.12
Albania	1.11
China	1.11
San Marino	1.10
Grenada	1.10
Georgia	1.08
Kosovo	1.08
Macedonia	1.08

Source: CIA, *Field Listing: Sex Ratio*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (last visited Apr. 21, 2014).

**TABLE #2:** Countries with Sex Ratios at Birth **Below** the Standard Range

Country <sup>35</sup>	Sex ratio at birth
Kazakhstan	0.94
Barbados	1.01
Haiti	1.01
Cayman Islands	1.02
Kenya	1.02
Malawi	1.02
Mozambique	1.02
Puerto Rico	1.02
Qatar	1.02
Saint Kitts and Nevis	1.02
South Africa	1.02

Source: CIA, *Field Listing: Sex Ratio*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (last visited Apr. 21, 2014).

### MYTH #3

The United States is one of the few countries in the world that does not ban sex-selective abortion.

*“We are the only advanced country left in the world that still doesn’t restrict sex-selection abortion in any way.”*

—Press Release from United States Representative Trent Franks (R-AZ).<sup>36</sup>

*“[I]f other countries have bans in place and the U.S. doesn’t, then our country runs the risk of becoming a magnet for those who wish to procure sex- and race-selective abortions.”*

—Testimony of Steven W. Mosher, President of the Population Research Institute, at a hearing before the Subcommittee on the Constitution of the Committee on the Judiciary.<sup>37</sup>

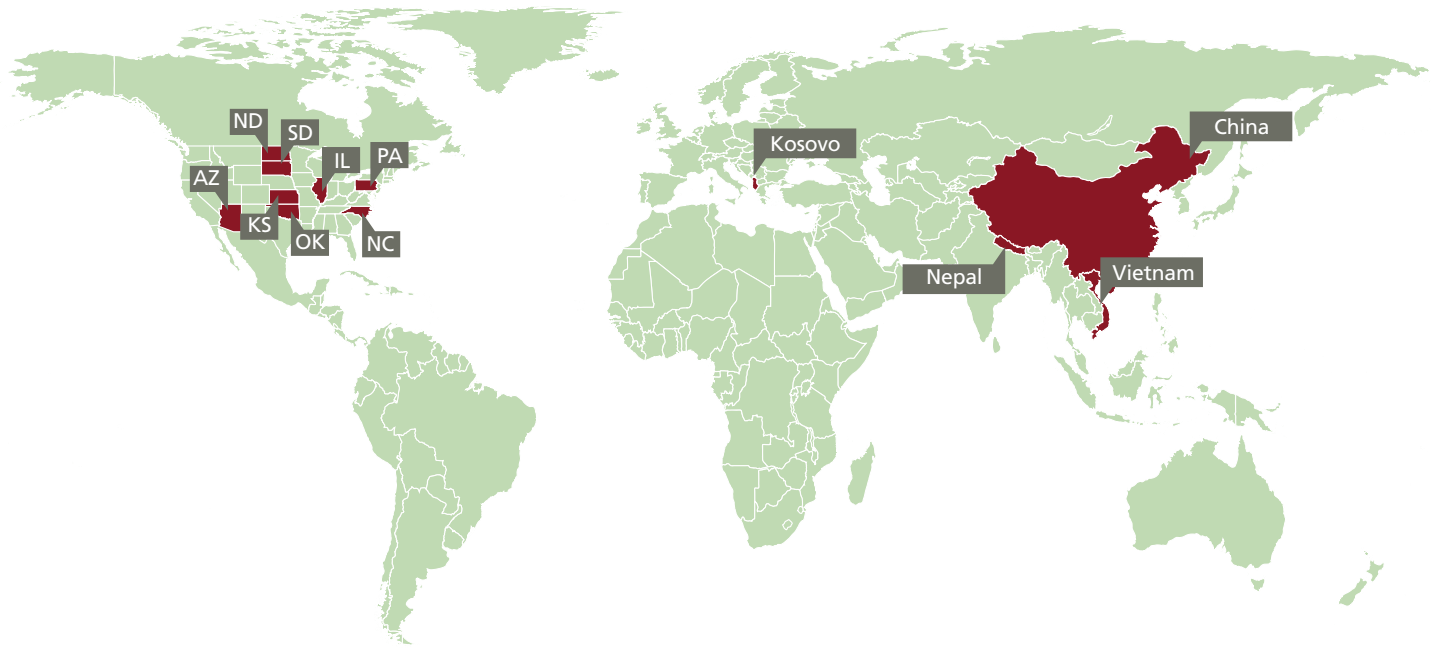
### FACT #3

Only four countries other than the United States have laws explicitly prohibiting sex-selective abortion: China, Kosovo, Nepal and Vietnam. Many countries that are concerned about sex selection regulate the practice only by prohibiting sex selection through preconception and preimplantation techniques.

Testimony during congressional hearings on an earlier version of the bill now pending in the United States Congress centered on the claim that a ban on sex-selective abortion was necessary to conform to international standards.<sup>38</sup> The text of the earlier bill claimed that “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.”<sup>39</sup> Major news outlets, such as the Washington Post and ABC News, have reported that particular countries have laws banning sex-selective abortions when, in fact, they do not.<sup>40</sup> The fact is that only four countries in the world today have laws that explicitly prohibit sex-selective abortions: China,<sup>41</sup> Kosovo,<sup>42</sup> Nepal<sup>43</sup> and Vietnam.<sup>44</sup>

Instead of banning sex-selective abortions, many countries that are concerned with sex selection have regulated the use of preconception and preimplantation technologies.<sup>45</sup> A few countries, such as China,<sup>46</sup> India<sup>47</sup> and Nepal,<sup>48</sup> prohibit medical professionals and others from revealing the sex of the fetus to parents. By contrast, Sweden explicitly permits the termination of a pregnancy based on the sex of the fetus.<sup>49</sup> Figure #1 below provides a color-coded world map that depicts jurisdictions where abortion laws specifically prohibit sex-selective abortion.<sup>50</sup>

**FIGURE #1**  
Jurisdictions that Explicitly Prohibit Sex-Selective Abortion



## MYTH #4

Laws banning sex-selective abortion are an effective way to prevent sex selection and adjust male-biased sex ratios at birth.

*“We have two studies now by economists which document son-biased sex ratios . . . . The enduring nature of sex-selection abortion further underlines the need for the kind of legislative remedy that [the sex-selective abortion ban] offers.”*

—Testimony of Steven W. Mosher, President of the Population Research Institute, at a hearing before the Subcommittee on the Constitution of the Committee on the Judiciary.<sup>51</sup>

## FACT #4

Our empirical analysis of sex ratios at birth five years before and after sex-selective abortion bans were enacted in Illinois and Pennsylvania indicates that the bans were not associated with changes in sex ratios at birth.

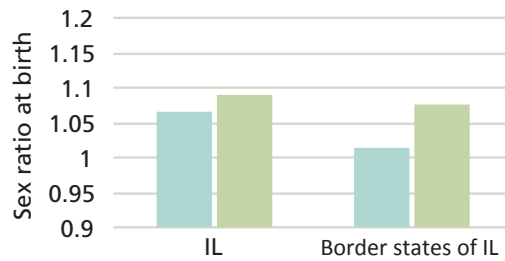
If sex-selective abortion bans have the effect they are meant to have, they should make an impact on sex ratios in the states where they are enacted. Six states have enacted bans in the last four years. However, two states passed laws banning sex-selective abortion over 15 years ago: Illinois in 1984 and Pennsylvania in 1989.<sup>52</sup> In order to determine whether sex-selective abortion bans in Illinois and Pennsylvania had any impact on sex ratios at birth in the two states, we conducted a difference-in-differences analysis. We first determined (1) the difference (i.e., changes) in sex ratios for the total population and among Asian Americans in Illinois and Pennsylvania over a 10-year period—five years before and five years after the bans were enacted. We compared these differences to (2) the difference in sex ratios during the same time periods for the total population and among Asian Americans in states that border Illinois and Pennsylvania.<sup>53</sup> The comparison of these two sets of “differences” (i.e., changes in sex ratios among each group in each state before and after the bans) constitutes a difference-in-differences analysis and provides evidence as to whether the sex-selective abortion bans had an impact on sex ratios at birth in Illinois and Pennsylvania.

We found that the bans were not associated with any changes in sex ratios at birth in the total population or among Asian Americans in Illinois or Pennsylvania during the 10-year period studied—five years before and five years after the bans (see Figures #2, #3, #4 and #5). That is, the difference between the following over a ten year period were not statistically significant:

- (1) Changes in sex ratios among (a) all people in Illinois and (b) all people in states that border Illinois before and after the ban in Illinois was enacted;
- (2) Changes in sex ratios among (a) Asian Americans in Illinois and (b) Asian Americans in states that border Illinois before and after the ban in Illinois was enacted;
- (3) Changes in sex ratios among (a) all people in Pennsylvania and (b) all people in states that border Pennsylvania before and after the ban in Pennsylvania was enacted;
- (4) Changes in sex ratios among (a) Asian Americans in Pennsylvania and (b) Asian Americans in states that border Pennsylvania before and after the ban in Pennsylvania was enacted.

**FIGURE #2**

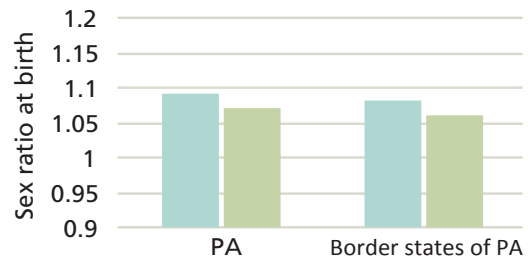
Sex Ratios at Birth of **Asian Americans** in IL and Border States Before and After IL Sex-Selective Abortion Ban in 1984



Source: Estimated from NCHS Data 1979-1988.

**FIGURE #3**

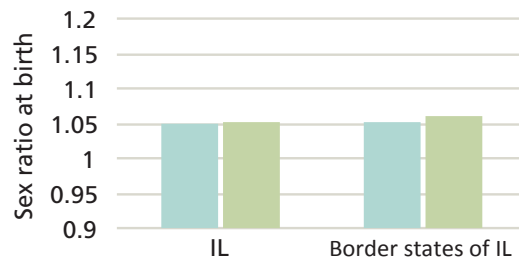
Sex Ratios at Birth of **Asian Americans** in PA and Border States Before and After PA Sex-Selective Abortion Ban in 1989



Source: Estimated from NCHS Data 1984-1993.

**FIGURE #4**

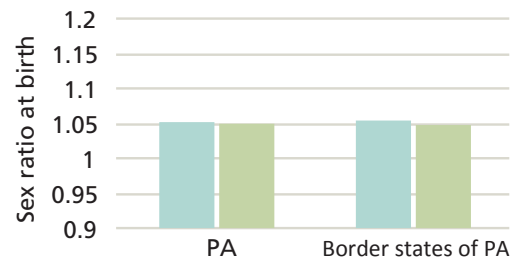
Sex Ratios at Birth of **Total Population** in IL and Border States Before and After IL Sex-Selective Abortion Ban in 1984



Source: Estimated from NCHS Data 1979-1988.

**FIGURE #5**

Sex Ratios at Birth of **Total Population** in PA and Border States Before and After PA Sex-Selective Abortion Ban in 1989



Source: Estimated from NCHS Data 1984-1993.

Before ban      After ban

In other words, the difference between changes in sex ratios before and after the bans in Illinois and Pennsylvania were no different from changes in sex ratios in their border states during the same periods. Our findings strongly suggest that sex-selective abortion bans have had *no* impact on sex ratios at birth in two states in which they were enacted.

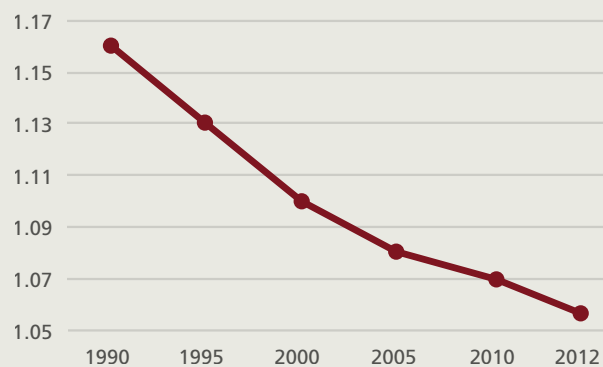
On the other hand, even though sex determination tests for the purpose of sex selection were banned, many experts believe that changes in social norms and economic development changed male-biased sex ratios in South Korea (see Box #2).

## **BOX #2: Sex Ratios in South Korea Improve with Economic Development and Evolving Norms**

Less than a generation ago, South Korea had one of the highest sex ratios at birth in the world. In 1990, the sex ratio at birth in South Korea was 1.16.<sup>54</sup> Today it is approximately 1.06.<sup>55</sup> From 1985 to 2003, the proportion of South Korean women reporting that “they must have a son” dropped from 48% to 17%.<sup>56</sup> A World Bank study found that changing social norms accounted for approximately 73% of the decline in son preference, with 27% of the decline resulting from changes in education and urbanization.<sup>57</sup> The growth in female education and employment increased women’s economic value, which significantly impacted social norms, reducing the preference for sons.<sup>58</sup>

During this time, use of ultrasound technology to determine the sex of the fetus for sex selection purposes was prohibited, but sex-selective abortion was not. Nonetheless, many experts attribute the turn-around to “a transformation of traditional gender roles and attitudes, led by civil society.”<sup>59</sup> As one commentator notes, “female education, anti-discrimination suits and equal-rights rulings made son preference seem old-fashioned and unnecessary.”<sup>60</sup>

Sex Ratios at Birth in South Korea\*



\*Source: Korea, Rep.: Sex Ratio at Birth (Males per Female), WORLD BANK (Aug. 8, 2013), [http://www.quandl.com/WORLDBANK/KOR\\_SP\\_POP\\_BRTH\\_MF-Korea-Rep-Sex-ratio-at-birth-males-per-female](http://www.quandl.com/WORLDBANK/KOR_SP_POP_BRTH_MF-Korea-Rep-Sex-ratio-at-birth-males-per-female); In-Soo Nam, *South Korean Women Get Even, At Least in Number*, WALL STR. J., July 1, 2013, available at <http://blogs.wsj.com/korearealtime/2013/07/01/south-korean-females-get-even-at-least-in-number>.

## MYTH #5

Empirical studies of sex ratios at birth of foreign-born Chinese, Indians and Koreans prove that sex-selective abortions based on son preference are occurring in the United States.

*“While it is difficult to say with any exactitude how many sex-selection abortions take place in the U.S. each year, the number is not trivial. . . . [W]e are talking about communities consisting of 3.9 million Chinese Americans, 2.8 million . . . Asian Indians, [and] 1.6 million Korean Americans[.] [T]he highly skewed sex ratios found in census surveys suggest among these groups alone, that tens of thousands of unborn girls have been eliminated, for no other reason than they are considered by some to be the wrong sex.”*

—Testimony of Steven W. Mosher, President of the Population Research Institute, at a hearing before the Subcommittee on the Constitution of the Committee on the Judiciary.<sup>61</sup>

*“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.”*

—Prenatal Nondiscrimination Act (PRENDA) of 2013.<sup>62</sup>

## FACT #5

An analysis of more recent national data of sex ratios at birth of foreign-born Chinese, Indians and Koreans shows that these groups have *more* girls overall than white Americans.

Legislators and proponents of sex-selective abortion bans claim that abortions based on son preference are widespread in the United States.<sup>63</sup> For example, the introduction to the federal bill to ban sex-selective abortion (the Prenatal Nondiscrimination Act (PRENDA) of 2013) states 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.”<sup>64</sup> During legislative debates in South Dakota prior to enactment of the state’s ban on sex-selective abortion, the vice president of South Dakota Right to Life suggested that all Asian Americans in South Dakota are “from ethnic backgrounds that are *known* to practice sex selection.”<sup>65</sup>

The key study relied upon in support of this contention was written by economists Douglas Almond and Lena Edlund, using data from the 2000 United States Census.<sup>66</sup> The study found male-biased sex ratios at birth for the second and third children of foreign-born Chinese, Indian and Korean families after they had already given birth to one or two girls.<sup>67</sup> Supporters of sex-selective abortion bans conclude that sex-selective abortions occur in the United States largely on the basis of this single study.<sup>68</sup> In Box #3 below, we also discuss three other studies sometimes cited in legislative debates in support of sex-selective abortion bans.<sup>69</sup>

The data used in Almond and Edlund’s study is almost 15 years old now. Their study did not examine sex ratios at birth among Asians born in the United States, nor did it discuss sex ratios among other Asian or racial communities in the country. Additionally, the study did not find male-biased sex ratios for the first births of foreign-born Chinese, Indians and Koreans. Nor did their findings show male-biased sex ratios at the second birth after one boy, or the third birth after a girl and a boy or two boys. Finally, the data used



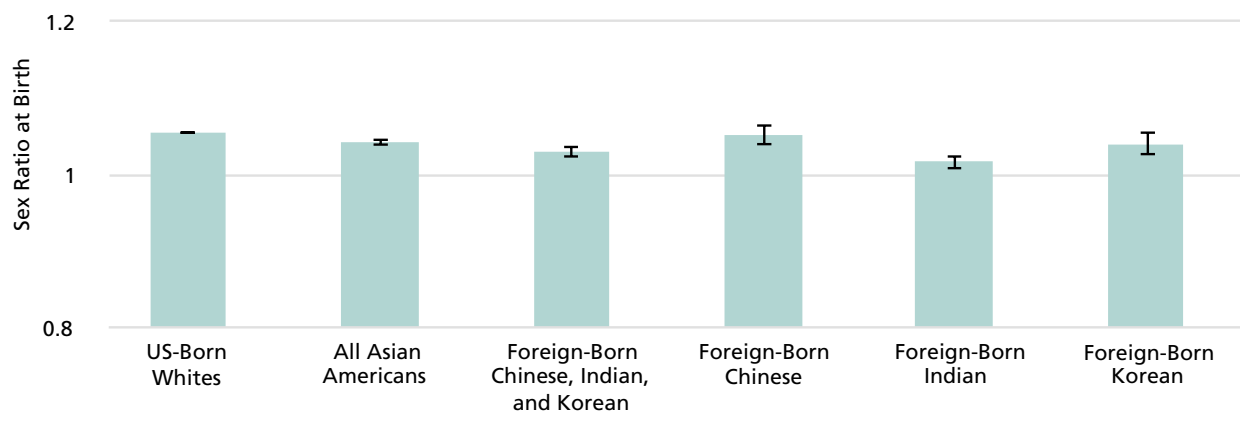
in Almond and Edlund’s study was from the national level; it provides no indication as to whether Asian Americans in any particular U.S. state demonstrated male-biased sex ratios at birth. For all of these reasons, it is inappropriate for legislators and proponents of sex-selective abortion bans at the state level to rely upon the study to provide evidence that Asian families living in their state exhibit male-biased sex ratios at birth.

In order to update Almond and Edlund’s study, we conducted an analysis of more recent data from the American Community Survey (ACS) during the period from 2007 to 2011. Our study focused on the same groups examined by Almond and Edlund—foreign-born Chinese, Indians and Koreans. Like Almond and Edlund, we only included families where (1) both parents were Chinese, Indian or Korean, (2) both parents were born in China, India or Korea, and (3) all children in the family were under 13 years old and born in the United States.

Our study of pooled ACS data confirms Almond and Edlund’s study with regard to the third births of foreign-born Chinese, Indian and Korean families that have already given birth to two girls. However, we also found that foreign-born Chinese, Indians and Koreans have an equal number of boys and girls at their first birth, with a sex ratio of 1.00. Whites have a sex ratio of 1.06 at their first birth (see Figure #7 below). This means that these Asian communities have *more* girls than whites in the United States have for their first children. Moreover, if we look at the sex ratio of foreign-born Chinese, Indians and Koreans across all births, we find that their overall sex ratio at birth is 1.03 (see Figure #6 below). Whites born in the United States have an overall sex ratio at birth of 1.05 (see Figure #6 below). Therefore, when we compare the overall sex ratio at birth of foreign-born Chinese, Indian and Korean families to the sex ratio at birth of whites born in the United States, we find that these Asian groups have *more* girls on average than whites.

Our findings also show that foreign-born Chinese, Indian and Korean families have a *female-biased* sex ratio at birth (0.64) after they have had two previous boys. The sex ratio at birth for children

**FIGURE #6**  
Sex Ratios at Birth of US-Born Whites, All Asian Americans, and Foreign-Born Chinese, Indians and Koreans (as a group and each separately)



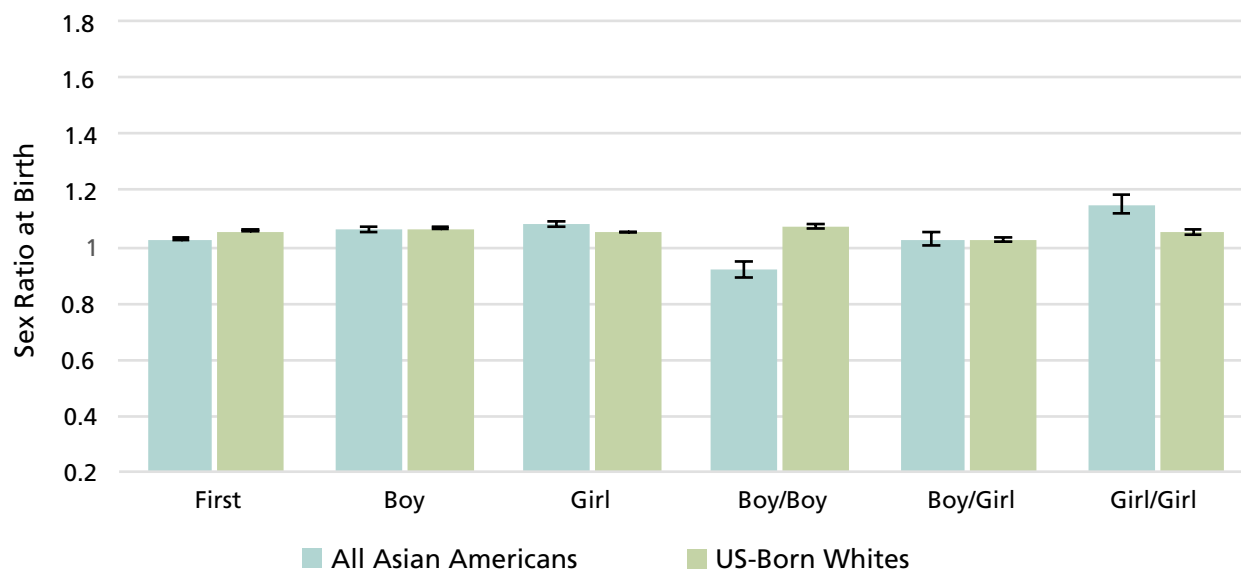
Source: Analysis of pooled American Community Survey data from 2007 to 2011.

born to white families with two prior boys is 1.07 (see Figure #7 below). This means that foreign-born Chinese, Indian and Korean families have *almost twice as many girls than boys* after having two boys, and considerably *more* girls than whites at the same birth parity.

We also looked at each ethnicity separately (see Figure #6 above). We found that the overall sex ratios at birth of foreign-born Chinese, Indians and Koreans, when disaggregated by ethnic group, are still *not* male-biased as compared both to whites and the standard range. Foreign-born Chinese have a sex ratio at birth identical to that of whites—1.05. Foreign-born Koreans have a sex ratio of 1.04 and foreign-born Indians have the lowest sex ratio at birth of the group at 1.02. This means that Indians in the United States have almost a one-to-one ratio of boys to girls when all their births are taken into account. In comparison, whites born in the United States have an overall sex ratio at birth of 1.05.

Finally, using the same pooled ACS data from 2007 to 2011, we examined the sex ratios at birth of all Asian Americans (see Figure #7 below). We included families wherein (1) both parents are Asian, including parents born both in and outside the United States, and (2) all children are under 13 years old and born in the United States. The overall sex ratio at birth for all Asian Americans in the United States is 1.04 (see Figure #6 above). This sits in the lower part of the standard range of sex ratios at birth (1.03 to 1.07) and is *lower* than whites in the United States (1.05) (see Figure #6 above). We also found *lower* sex ratios at the first birth (1.02) and after two boys (0.92) for all Asian Americans

**FIGURE #7**  
Sex Ratios at Birth of All Asian Americans and US-Born Whites



Source: Analysis of pooled American Community Survey data from 2007 to 2011.

as compared to whites in the United States (1.06 and 1.07 respectively) (see Figure #7 above). Our analysis of sex ratios of all Asian Americans confirms that when all births are taken into account Asian Americans do *not* have male-biased sex ratios, but in fact have an overall sex ratio at birth within the standard range and *lower* than that of whites (i.e., more female-biased than whites).

Proponents of sex-selective abortion bans claim that there are “missing women” in the United States. For example, the introduction to the federal bill that would ban sex-selective abortion claims that sex-selective abortions “have the effect of diminishing the representation of women in the American population.”<sup>70</sup> We took the ratio of girls to total children born to whites and multiplied it by the total number of children born to foreign-born Chinese, Indians and Koreans in the United States. In doing so, we were able to calculate the number of girls white families would have if they had the same total number of children as this group of Asian Americans. Next, we compared this number to the number of girls born to foreign-born Chinese, Indians and Koreans in the United States. This comparative analysis accounts for the different number of children had by each group. We found that foreign-born Chinese, Indians and Koreans had 2,772 more girls than whites during the period of our data. That is, if white Americans and foreign-born Chinese, Indians and Koreans had the same number of children, white Americans would have 2,772 less girls than foreign-born Chinese, Indians and Koreans. We calculated this same figure for all Asians Americans and found that Asian Americans, as a group, also have *more* girls than white Americans, approximately the same number as foreign-born Chinese, Indians and Koreans. Fertility rates are not a factor in this calculation because white Americans and Asian Americans have the same fertility rate (1.8).<sup>71</sup>

**TABLE #3:**  
Asian Populations in the United States

Total Population in the United States	
All Asians	17,320,856*
Chinese	3,794,673
Indians	3,183,063
Koreans	1,706,822

\*Approximately 6% of the total U.S. population

Source: U.S. Census Bureau, 2010 Census.

## **BOX #3: A Closer Look at Other Studies on Sex Selection in the United States**

### **James Egan et al.<sup>72</sup>**

Using data from NCHS for the period of 1975 to 2002, Egan et al. concluded, in line with Almond and Edlund, that sex ratios at birth for Chinese, Indians, Filipinos and Koreans in the United States were male-biased at the second and third birth parities. However, the NCHS data used in the study does not contain information about the father's ethnicity and does not distinguish between foreign-born mothers and those born in the United States. In addition, the NCHS data used is from 1975 to 2002, with a focus on four year periods from 1991 to 2002. Our study (see discussion of Myth #5 above) utilized more recent and precise pooled data from the ACS. The ACS data includes information on the ethnicity of the father and the birthplace of both parents and is pooled from the years 2007 to 2011. Our study thus provides a broader analysis of sex ratios of foreign-born Chinese, Indians and Koreans and all Asian Americans across all birth parties. When taking all births into account, the sex ratios at birth of these communities are not skewed in favor of males.

### **Joseph Abrevaya<sup>73</sup>**

Abrevaya used data on births from three sources: (1) the 1980, 1990 and 2000 United States Censuses; (2) NCHS from 1971 to 2002; and (3) the California Department of Health Services (CDHS) from 1982 to 2003. He examined the births of whites, Asians and other races in search of evidence of gender preference and sex selection. In line with Almond and Edlund's study, Abrevaya found that Chinese and Indians were more likely to have a son at their third and fourth births than the other groups studied. The effect was more significant when both parents were the same ethnicity than for families where only the mother was Chinese or Indian.

However, Abrevaya also found that in the aggregate the sex of the first child does not play a significant role in the decision whether or not to have a second child in the United States. His analysis of NCHS and CDHS data also reveals that whites and Asian Americans have approximately equal percentages of boys and girls at their first births. Moreover, he states that even 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. Importantly, while he asserts that most sex selection in the United States is likely achieved through sex determination followed by sex-selective abortion, he acknowledges that since 1980 only 5% of abortions have occurred late enough during pregnancy for the sex of the fetus to have been determined. Finally, the data used by Abrevaya is between 11 and 14 years old and the study itself is almost ten years old. Our study (see discussion of Myth #5 above) used pooled data from the ACS from 2007 to 2011. This data is more recent and precise and includes information on the ethnicity of the father and the birthplace of both parents. Our study therefore provides a broader analysis. As noted above, when taking all births into account, the sex ratios at birth of foreign-born Chinese, Indians and Koreans and all Asian Americans are not skewed in favor of males.

### **Sunita Puri et al.<sup>74</sup>**

Supporters of sex-selective abortion bans also point to a qualitative study authored by physician Sunita Puri et al. In the study, Puri et al. recruited and interviewed 65 South Asian immigrant

women who were specifically seeking sex selection technologies in order to have a son. The purpose of Dr. Puri’s study was, in part, to document the social and family pressures to have sons that these South Asian immigrant women faced. Of the 65 women, 51 used ultrasound, 10 used sperm sorting and 4 had undergone in-vitro fertilization for sex determination. The participants had on average two children and 62 of the 65 women had only female children. The study found that some of the women interviewed had aborted female fetuses in the past and some who were pregnant at the time intended to so. However, the study should not be taken to be representative of South Asian women in the United States, since it included only 65 women—most of whom were recruited from clinics offering elective prenatal ultrasound services. Moreover, our study of data from the ACS (see discussion of Myth #5 above) reveals that Asian American families also desire to have daughters. This is apparent from our finding that after Asian Americans have two boys their sex ratio at birth is skewed towards females.

For the reasons discussed above, the few empirical studies in this field have been used improperly to support the contentions that: (1) all Asian Americans are sex selecting; (2) all Asian Americans sex select because of a preference for sons and an aversion to daughters; and (3) abortion is the method by which sex selection is achieved (see Myth #1 above, pointing out that abortion is not the only way to sex select). In fact, recent polling data refutes the existence of son preference among Asian Americans in the United States. The 2012 National Asian American Survey on opinions among Asians and Pacific Islanders posed the following question: “In some countries, people are allowed to have only one child. If, for whatever reason, you could only have one child, would you want it to be a boy, a girl, or does it not matter?” Chinese, Korean, and Indian respondents showed very slight and equal preference for sons and daughters (see Table #4 below). Overall, 92% of Chinese, 92% of Indians and 89% of Koreans surveyed said “It doesn’t matter or they don’t care.”<sup>75</sup>

**TABLE #4:**  
Gender Preference for First and Only Born Children of Chinese, Indian and Korean Americans

	Chinese	Indian	Korean
Prefer First and Only Born Girl	3%	3%	7%
Prefer First and Only Born Boy	4%	3%	8%
Don't Care/ Doesn't Matter	92%	92%	84%

Source: National Asian American Survey 2012. Margin of error = +/- 5%.

## MYTH #6

The primary motivation behind laws banning sex-selective abortion in the United States is to prevent gender-based discrimination.

*“The reason for opposing sex-selection is uniform: the desire to combat discrimination.”*

—Submission of United States Representative Lamar Smith (R-TX) to the Committee of the Whole House on the State of the Union.<sup>76</sup>

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

—Stated purpose of the Prenatal Nondiscrimination Act of 2013.<sup>77</sup>

## FACT #6

Restricting access to abortion is the primary motivation for sex-selective abortion bans. All the bans have been proposed and supported by people who oppose abortion generally.

Proponents of laws banning sex-selective abortion in legislatures and civil society groups around the country claim that the laws will prevent gender discrimination. For example, the House Report on the Prenatal Nondiscrimination Act of 2012—a federal bill that would have banned sex-selective abortion throughout the United States—asserts that “[t]he reason for opposing sex-selection is uniform: the desire to combat discrimination.”<sup>78</sup> However, upon closer examination it becomes clear that restricting access to abortion generally is the primary motivation for sex-selective abortion bans in the United States.

In the United States Congress and state legislatures across the country, politicians who sponsor sex-selective abortion bans are at the forefront of the movement to make abortion illegal.<sup>79</sup> For example, United States Representative Trent Franks (R-AZ) sponsored sex-selective abortion bans in both the United States Congress and the Arizona state legislature.<sup>80</sup> Representative Franks has stated: “I have made it one of my priorities in public office to fight for the end of abortion on demand.”<sup>81</sup> United States Representative Chris Smith (R-NJ), a vocal supporter of the federal bill that would ban sex-selective abortion, also supports bills that would prohibit federal funding for abortion services and groups like Planned Parenthood.<sup>82</sup> Representative Smith has stated that “abortion is a serious, lethal violation of fundamental human rights” and that the “pro-life movement is not only on the side of compassion, justice, and inclusion,” but also “the right side of responsible science and of history.”<sup>83</sup> In the North Dakota and Texas state legislatures, sponsors of bans on sex-selective abortion also sponsored bills that prohibit abortion after the detection of a fetal heartbeat.<sup>84</sup>

Proponents of sex-selective abortion bans have explicitly stated that the laws are actually part of the effort to restrict access to abortion entirely. In 2008, Steven Mosher, head of the Population Research Institute (a leading anti-abortion group), stated: “I propose that we—the pro-life movement—adopt as our next goal the banning of sex- and race-selective abortion.”<sup>85</sup> And in a 2008 article, an

influential conservative thinker and law professor declared that the “key to eroding *Roe v. Wade* . . . is to pass a number of state or federal laws that restrict abortion rights in ways approved of by at least fifty percent of the public,” such as “a ban on abortion for sex selection.”<sup>86</sup> Following this lead, anti-abortion groups have created model legislation to ban sex-selective abortion.<sup>87</sup>

The language used in laws banning sex-selective abortion also suggests that lawmakers are concerned primarily with restricting access to abortion generally, rather than combatting gender discrimination. For instance, the language used in the bill pending in the United States Congress consistently refers to the “unborn child” and defines abortion sought based on the sex of the fetus as “the intentional killing of unborn females.”<sup>88</sup> The bill also makes the claim that “[a]bortion is the leading cause of death in the Black community,” thereby equating the termination of a pregnancy with the death of a living person.<sup>89</sup>

Box #4 highlights important aspects of some of the laws enacted and considered at the state level. A chart summarizing each law is attached in the Appendix.

#### **BOX #4: Content of Enacted and Proposed Laws Banning Sex-Selective Abortion**

##### **Obligations of Health Care Providers**

The law enacted in Arizona requires health care professionals to report “known violations . . . to appropriate law enforcement authorities.”<sup>90</sup> In South Dakota, the law requires physicians to “inquire into whether the pregnant mother knows the sex of her unborn child and if so, whether the mother is seeking an abortion due to the sex of the unborn child.”<sup>91</sup> Under the bill considered in Florida, physicians would have to sign an affidavit attesting that the abortion is not being performed based on the sex of the fetus.<sup>92</sup>

##### **Enforcement by Relatives or Health Care Providers Possible**

The law in Oklahoma allows “any person who is the spouse, parent, sibling, or guardian of, or current or former licensed health care provider of” the woman seeking an abortion to bring a suit for injunctive relief.<sup>93</sup> The law in North Carolina allows the “current or former licensed health care provider of the woman upon whom an abortion was performed or attempted” to bring a claim for injunctive relief “against any person” who has violated the law.<sup>94</sup>

##### **Prohibition of Termination for Genetic Disorders**

Laws enacted in North Dakota and considered in Missouri expressly prohibit the performance of an abortion even when the fetus has been diagnosed with a genetic disorder.<sup>95</sup>

##### **No Intent Required**

Laws considered in Oregon and West Virginia prohibit the performance of a sex-selective abortion without any reference to intent or knowledge.<sup>96</sup> These laws would establish a strict liability offense under which health care providers would be liable even if they did not know or could not have known that an abortion was sought based on the sex of the fetus.

### Race-Selective Abortion

Laws enacted in Arizona and considered in Florida, Georgia, Indiana, New Jersey and the United States Congress also prohibit race-selective abortion.<sup>97</sup> A race-selective abortion is “an abortion performed for purposes of eliminating an unborn child because the child or a parent of the child is of an undesired race.”<sup>98</sup> Race-selective abortion bans purport to address racial discrimination perpetrated through abortion and are aimed at health care providers that allegedly target women of color for abortions.

An analysis of voting records in the six states that have enacted sex-selective abortion bans in the last four years<sup>99</sup> shows that votes on the laws closely follow party lines, with overwhelming support from Republican legislators (see Table #5 below). On average, 92% of Republican legislators voted in favor of the bans in the House of Representatives and Senates in these six states.<sup>100</sup> Less than 10% of Democrats voted for the bans in Arizona, Kansas, North Carolina and North Dakota.<sup>101</sup> The two states where sex-selective abortion bans achieved meaningful support from Democrats—Oklahoma and South Dakota—have among the most restrictive abortion laws in the United States.<sup>102</sup> In both states, laws that restrict access to abortion consistently receive bipartisan support.<sup>103</sup> As a result, 96% of counties in Oklahoma and 98% of counties in South Dakota are without abortion providers.<sup>104</sup>

**TABLE #5:**  
Voting Records on Recently Enacted Sex-Selective Abortion Bans

	Arizona (2011)		Kansas (2013)		N. Carolina (2013)		N. Dakota (2013)		Oklahoma (2010)		S. Dakota (2014)	
	House	Senate	House	Senate	House	Senate	House	Senate	House	Senate	House	Senate
Republicans (Total)	40	21	92	32	76	33	71	33	62	26	52	28
% voted for ban	95.00	100	92.39	87.50	97.36	96.97	83.01	72.72	96.77	92.30	98.01	89.29
% voted against ban	5.00	0	5.43	6.25	1.31	3.03	14.08	18.18	0	0	0	10.71
Democrats (Total)	20	9	33	8	43	17	23	14	39	22	18	7
% voted for ban	15.00	0	15.15	0	0	0	21.74	21.43	89.74	86.36	44.44	71.43
% voted against ban	80.00	55.55	75.75	100	93.02	70.59	73.91	64.28	2.56	9.09	55.56	28.57

Source: For the votes on H.B. 2442, 50th Leg., 1st Reg. Sess. (Ariz. 2011); H.B. 2253, 2013 Leg., Reg. Sess. (Kan. 2013); S.B. 353, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013); and H.B. 1305, 63d Leg. Assemb., Reg. Sess. (N.D. 2013), see VOTE SMART, <http://votesmart.org/> (last visited Apr. 21, 2014). For the vote on S.B. 1890, 52d Leg., 2d Reg. Sess. (Okla. 2010), see *Bill Information for SB 1890 (2009-2010)*, OKLAHOMA STATE LEGISLATURE (Apr. 5, 2010), <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB1890&Session=1000>. For the vote on H.B. 1162, 89th Leg., Reg. Sess. (S.D. 2014), see *House Bill 1162*, SOUTH DAKOTA STATE LEGISLATURE (Mar. 31, 2014), [http://legis.sd.gov/Legislative\\_Session/Bills/RollCall.aspx?Vote=16245&Session=20](http://legis.sd.gov/Legislative_Session/Bills/RollCall.aspx?Vote=16245&Session=20).



## BOX #5: A Focus on Declining Sex Ratios in India and a Comparison to the United States

Child sex ratios in India, measured as the number of girls per 1,000 boys, have been declining since at least 1981. The child sex ratio fell from 927 girls per 1,000 boys in 2001 to an all-time low of 919 girls in 2011.<sup>105</sup> Child sex ratios vary dramatically by state in India, from 830 girls per 1,000 boys in the North<sup>106</sup> to 970 girls per 1,000 boys in the East.<sup>107</sup> In some states, like Kerala, the overall sex ratio is not male-biased at all.<sup>108</sup>

### Factors Influencing the Decline in Child Sex Ratios

A complex set of factors underlie the preference for sons in India. In the most rudimentary sense, girls are an economic liability to a family, while boys are economic assets. Although dowry is prohibited under the Dowry Prohibition Act, 1961, the practice continues today.<sup>109</sup> As a result, when a woman gets married, her parents often have to pay money (sometimes large sums in relation to their income) to the groom's family. In many parts of India, a patrilocal culture prevails

wherein married couples reside in the home of the husband. To the extent a woman earns an income outside of her household, she will often be expected to keep her earnings within the husband's family. There is also no old age pension system in India. Families thus believe they must have at least one son upon whom they can depend for financial security in old age. Even if daughters are economically prosperous, parents often prefer living with their sons due to entrenched social norms and the perception that living with their daughters will lower the social status of the family.<sup>110</sup>

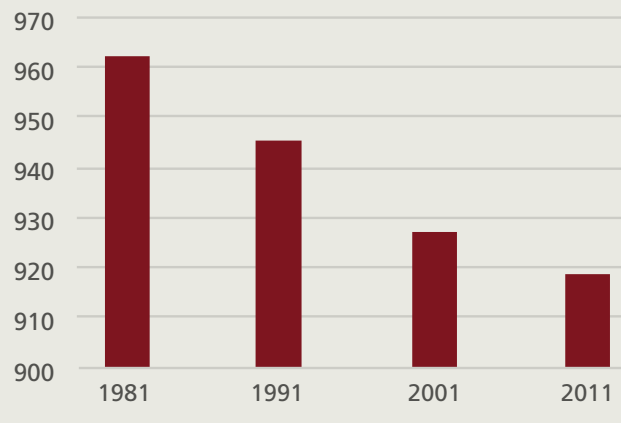
The lack of safety and security for women and girls in India is also a major concern. The lack of safety and security contributes to the preference for sons by constraining female participation in the public sphere, which limits social and economic opportunities for women.<sup>111</sup>

Religious customs and practices also reinforce the preference for sons in India. Many Hindus believe that only sons are able to light the funeral pyre of their parents.<sup>112</sup> Others believe that *moksha* (liberation from rebirth or reincarnation) is only possible through their sons.<sup>113</sup>

### India Bans Medical Professionals from Revealing the Sex of the Fetus

In 1994, the Government of India enacted the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.<sup>114</sup> The act was amended in 2003 and renamed the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT

Child Sex Ratios in India



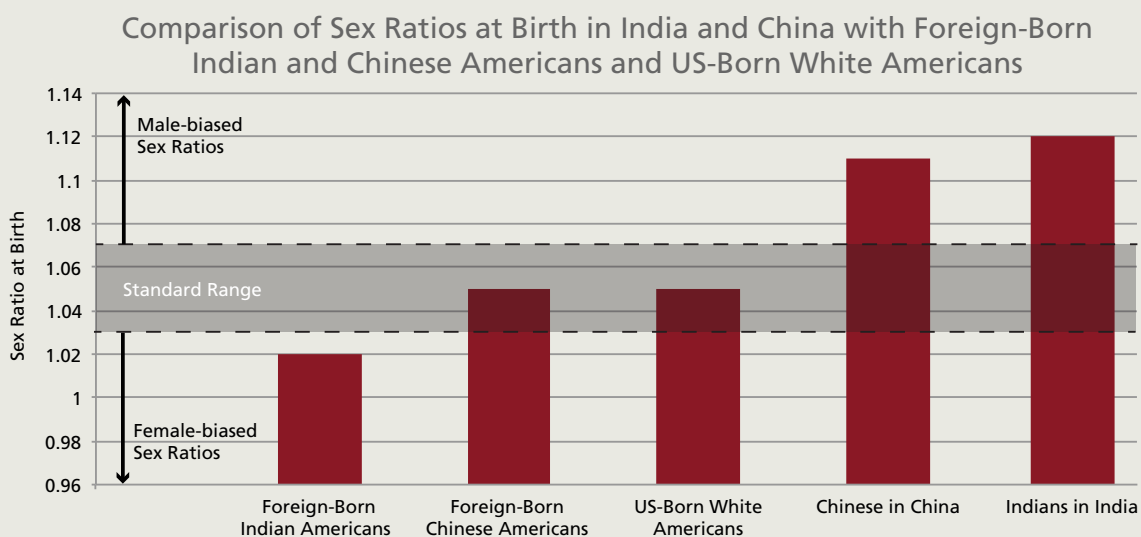
Source: Census of India 1981, 1991, 2001 and 2011.

Act).<sup>115</sup> The PCPNDT Act prohibits, among other things, conducting or aiding sex selection, seeking or encouraging sex selection, determining or communicating the sex of a fetus, and advertising prenatal sex determination. However, the PCPNDT Act has not been successful in normalizing male-biased child sex ratios in India.

The lack of regulation of the private health sector in India contributes to the availability of sex determination procedures and the difficulty in implementing the PCPNDT Act. More than 90% of physicians in India practice in the private health sector.<sup>116</sup> Virtually all sex determination procedures are performed in the private sector, out of the reach of government regulation and law enforcement. The increased availability and affordability of sex determination technology, especially ultrasound technology in the 1980s, allows people to act upon their desire to have at least one son and at the same time have fewer children overall.

### Comparison to the United States

Many of the factors that lead to sex selection based on son preference in India are not present in the United States. For instance, the practice of dowry is not common in the United States and families often share the costs of marriage. Parents in the United States rely on both public and private pension systems for financial security in old age, rather than their sons and extended family, as in India. The patrilocal system is not present in the United States. In 2010, 87% of households were comprised of the householder, his or her spouse, and his or her sons and daughters in the United States.<sup>117</sup> In contrast, only 0.7% of households included a parent-in-law, son-in-law, or daughter-in-law.<sup>118</sup> Property and inheritance laws are gender neutral in the United States and women and girls regularly assert their rights to both. In India, a family's social status is affected by the gender of their children, with sons bringing higher status. In contrast, a family's social status in the United States is based on a combination of education, income, and occupation.<sup>119</sup> The figure below provides a comparison of sex ratios at birth in India and China with certain groups in the United States.



Sources: For sex ratios in India and China, the CIA World Factbook. For sex ratios of foreign-born Indian and Chinese Americans and US-born whites, the American Community Survey from 2007 to 2011.

## **BOX #6:** Skewed Sex Ratios at Birth and Son Preference in China

In the 1960s and 1970s, the sex ratio at birth in China was roughly 1.06 males to every female, which was within the standard range.<sup>120</sup> The sex ratio has risen steadily since then from 108.5 in 1981 to 1.12 today.<sup>121</sup> China's one-child policy, implemented in 1979, is commonly thought to be the primary reason for the increases,<sup>122</sup> along with the availability of sex determination technology, and ultrasound machines in particular.<sup>123</sup> On the demand side, the preference for sons in China is driven by factors similar to those present in India. Boys are preferred because they have higher earning potential than girls.<sup>124</sup> This view is perpetuated by the dominant patriarchal system in the country.<sup>125</sup> Families often prefer sons because they are concerned with the family's lineage and they do not want to invest in daughters who will eventually leave the home after marriage to live with their husband's family. Deep-rooted Confucian values that favor men over women also underlie the preference for sons in China.<sup>126</sup> As in India, the social and legal circumstances leading to skewed sex ratios in China are largely not present in the United States.

## IV. Conclusion

Several countries in the world have sex ratios at birth that are as high or higher than China and India, including countries with predominantly white populations. Nonetheless, immigrant communities in the United States from China and India are consistently accused of harboring a preference for sons. It is supposedly this preference for sons that leads Asian Americans to abort female fetuses. In response, eight states have enacted bans on sex-selective abortion and 21 states and the United States Congress have considered such bans.

The key empirical support for sex-selective abortion bans in the United States comes from a study of census data that is now almost 15 years old. The study by Almond and Edlund found male-biased sex ratios at birth for the second and third children of foreign-born Chinese, Indians and Koreans when they had already given birth to one or two girls. Our study of more recent data from the American Community Survey from 2007 to 2011 reveals that the sex ratios at birth of foreign-born Chinese, Indians and Koreans, as well as all Asian Americans, in the United States are lower than the sex ratios of white Americans, when all births are taken into account. This means that Asian Americans have *more* girls than white Americans. The National Asian American Survey, a poll conducted among Asian Americans, further reveals that Asian Americans do not have a preference for sons over daughters.

Proponents of sex-selective abortion bans claim that the United States is one of the few countries in the world where sex-selective abortion is not prohibited. However, our research reveals that only four countries explicitly prohibit sex-selective abortion and that, instead, many countries that are concerned with sex selection prohibit the practice even before the embryo is implanted in the uterus. Our research also reveals that sex-selective abortion bans are not likely to change sex ratios at birth. In a study we conducted on sex ratios in two states that adopted sex-selective abortion bans over 15 years ago—Illinois and Pennsylvania—we found that the laws were not associated with changes in sex ratios.

Abortion is not the only way in which sex selection can be achieved. Reproductive technologies are legally available in the United States that allow people to sex select prior to conception and prior to implantation of the embryo in the uterus. However, none of the laws that ban sex-selective abortion in the United States regulate preconception or preimplantation sex selection. There is, in fact, no way to determine what method has been used to achieve sex selection or whether sex selection has occurred at all based solely on sex ratios at birth.

Laws banning sex-selective abortion purport to combat gender discrimination. However, the text of the laws and the statements made in support of the bans during legislative hearings make it clear that they are intended to place restrictions on abortion services generally. Moreover, the laws purport

to solve a problem that may not exist at all in the United States. Rather than changing behavior or addressing a purported problem, sex-selective abortion bans are likely to lead to the denial of health care services to Asian American women. Many of the laws require medical professionals to scrutinize a woman's reproductive choices. Since it is difficult to determine the true reason a woman has chosen to terminate her pregnancy, medical professionals may err on the side of caution and deny care to women in order to avoid liability under the law, even when a woman is not seeking a sex-selective abortion. Laws banning sex-selective abortion have been enacted on the basis of misinformation and harmful stereotypes about Asian Americans. We do not support the practice of sex selection by any means, but rather than combating discrimination, sex-selective abortion bans perpetuate it.

# Appendix

## Summary of Laws Banning Sex-Selective Abortion in the United States

State	What is prohibited?	Who can be held liable?	Penalties and remedies for violations	Intent required	Sex of the fetus as a decision factor	Duties imposed on providers	Exception for Sex-Linked Genetic Disorder
Arizona <sup>127</sup>	Performance of sex-selective abortion	Any person who carries out the prohibited acts (the woman is explicitly exempted)	Class 3 felony	Knowledge re: performance	Liability if it is one factor	Must report known violations	No
	Use of force or threat to injure or intimidate for purpose of coercion		Monetary damages	Knowledge and intent re: coercion			
	Solicit or accept money to finance		Attorneys' fees	Knowledge re: finance			
Illinois <sup>128</sup>	Performance of sex-selective abortion	Any person who carries out the prohibited acts	Class A misdemeanor	Knowledge and intent	Liability only if it is the sole factor	None	Yes
			Refusal, denial, revocation, Suspension or withdrawal of license, certificate, or permit				
Kansas	Performance or inducement of sex-selective abortion	Any person who carries out the prohibited acts (the woman is explicitly exempted)	Class A person misdemeanor for first offense	Knowledge	Liability only if it is the sole factor	None	No
	Attempt to perform or attempt to induce a sex-selective abortion		Severity level 10 person felony for subsequent offense Monetary damages Statutory damages Attorneys' fees Injunctive relief				
North Carolina	Performance of sex-selective abortion	Any person who carries out the prohibited acts	Damages	Knowledge or an objective reason to know	Liability only if it is a significant factor	No affirmative duty to inquire whether sex is a significant factor	No
	Attempt to perform a sex-selective abortion		Injunctive relief Civil contempt and fine if violation of injunction				

State	What is prohibited?	Who can be held liable?	Penalties and remedies for violations	Intent required	Sex of the fetus as a decision factor	Duties imposed on providers	Exception for Sex-Linked Genetic Disorder
North Dakota <sup>29</sup>	Performance of sex-selective abortion	Any physician who carries out prohibited acts	Class A misdemeanor	Intent and knowledge	Liability only if it is the sole factor	None	No
	Attempt to perform a sex-selective abortion						
Oklahoma	Performance of sex-selective abortion	Any person who carries out the prohibited acts except no civil fine for violation of injunction for pregnant woman	Injunctive relief and monetary damages for violating injunction  Creates cause of action against abortion provider in favor of pregnant female or parents if minor for actual and punitive damages  Suspension or revocation of health care certificate or license	Knowledge or recklessness	Liability only if it is the sole factor	None	Yes
	Attempt to perform a sex-selective abortion						
Pennsylvania	Performance of sex-selective abortion	Any physician who carries out the prohibited acts	Third degree felony  Suspension or revocation of medical license	Intent, knowledge, or recklessness	Liability only if it is the sole factor	None	No
	Attempt to perform a sex-selective abortion						
South Dakota	Performance of sex-selective abortion  Attempt to perform a sex-selective abortion	Any person who carries out the prohibited acts (the woman is explicitly exempted)	Class 6 felony	Knowledge or reckless disregard	Liability if it is one factor	Must inquire whether woman knows sex of unborn child, and, if so, whether she is seeking abortion based on the sex before performing abortion  Must report if a woman who obtained an abortion also obtained a sex determination test, type of test, and gestational age of fetus when test was obtained	No

# Endnotes

<sup>1</sup> COLLINS ENGLISH DICTIONARY, <http://www.collinsdictionary.com/dictionary/english/sex-selection> (last visited Apr. 21, 2014).

<sup>2</sup> In 1993, a federal district court issued a consent decree that enjoined enforcement of the IL ban on sex-selective abortion “only to the extent it subjects physicians to criminal liability for performing . . . pre-viability abortions.” The ban is still in place for post-viability sex-selective abortions and ostensibly for non-criminal sanctions for pre-viability sex-selective abortions. *Herbst v. O’Malley*, No. 84 C 5602, IV(1)(K), p 13 (D. Ill. 1993).

<sup>3</sup> See Sital Kalantry, *Sex Selection in the United States and India: A Contextualist Feminist Approach*, 18 UCLA J. INT’L L. & FOR. AFF. 61, 68–75 (2013) (pointing out that proponents of sex selective abortion bans in the United States present information about son-preference in India in a narrow and misleading lens to push for the bans in the United States).

<sup>4</sup> Prenatal Nondiscrimination Act of 2013, H.R. 447 and S. 138, 113th Cong. (2013).

<sup>5</sup> Center for Reproductive Rights, *The World’s Abortion Laws Map 2013 Update* (June 2013), [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap\\_Factsheet\\_2013.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap_Factsheet_2013.pdf).

<sup>6</sup> Harvard School of Public Health, *Abortion Laws of the World*, <http://www.hsph.harvard.edu/population/abortion/abortionlaws.htm> (last visited Apr. 21, 2014).

<sup>7</sup> United Nations, *Abortion Policies: A Global Review*, <http://www.un.org/esa/population/publications/abortion/profiles.htm> (last visited Apr. 21, 2014).

<sup>8</sup> *G12 Country Regulations of Assisted Reproductive Technologies*, THE CENTER FOR BIOETHICS AND HUMAN DIGNITY (Oct. 1, 2010), <http://cbhd.org/content/g12-country-regulations-assisted-reproductive-technologies>.

<sup>9</sup> VOTE SMART, <http://votesmart.org/> (last visited Apr. 21, 2014).

<sup>10</sup> For a technical note on these studies, see International Human Rights Clinic, *Quantitative Data Analysis Methodologies*, THE UNIVERSITY OF CHICAGO (May 1, 2014), <https://ihrcclinic.uchicago.edu/page/quantitative-data-analysis-methodologies>.

<sup>11</sup> *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Hearing before the S. Comm. on the Constitution of the Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Rep. Trent Franks), available at [http://judiciary.house.gov/\\_files/hearings/printers/112th/112-74\\_71599.PDF](http://judiciary.house.gov/_files/hearings/printers/112th/112-74_71599.PDF) (quoting Jonathan V. Last, *The War Against Girls: Since the Late 1970s, 163 Million Female Babies Have Been Aborted by Parents Seeking Sons*, WALL ST. J., June 24, 2011).

<sup>12</sup> *Testimony to the South Dakota House of Representatives*, 89th Leg., 19th Sess. (S.D. 2014) (statement of Spencer Cody, Vice President of South Dakota Right to Life), available at <http://sdpb.sd.gov/statehouse/archives/2014/hju.aspx?committeecode=hju>.

<sup>13</sup> ARIZ. REV. STAT. § 13-3603.02 (2013); 720 ILL. COMP. STAT. § 510/6-8 (2013); KAN. STAT. § 65-6726 (2013); N.C. GEN. STAT. § 90-21.121 (2013); N.D. CENT. CODE § 14-02.1-04.1 (2013); OKLA. STAT. TIT. 63, § 1-731.2 (2013); 18 PA. CONS. STAT. § 3204 (2013); H.B. 1162, 89th Leg., Reg. Sess. (S.D. 2014) (enacted); see also *supra* note 2.

<sup>14</sup> United States Congress, see, e.g., Prenatal Nondiscrimination Act of 2013, H.R. 447 and S. 138, 113th Cong. (2013); California, A.B. 2336, 2013–2104 Leg., Reg. Sess. (Cal. 2014); Colorado, see, e.g., H.B. 1131 and S.B. 56, 69th Gen. Assemb., Reg. Sess. (Colo. 2013); Florida, see, e.g., H.B. 845 and S.B. 1072, 115th Leg., Reg. Sess. (Fla. 2013); Georgia, H.B. 1155 and S.B. 529, 2009 Leg., Reg. Sess. (Ga. 2010); Iowa, S.F. 13, 85th Gen. Assemb. (Iowa 2014); Idaho, H.B. 693, 60th Leg., Reg. Sess. (Idaho 2010); Indiana, H.B. 1430 and S.B. 183, 118th Gen. Assemb., Reg. Sess. (Ind. 2013); Massachusetts, H.B. 1567, 188th Leg., Reg. Sess. (Mass. 2014); Michigan, see, e.g., H.B. 5731, 96th Leg., Reg. Sess. (Mich. 2012); Minnesota, see, e.g., H.F. 1196 and S.F. 1073, 86th Leg., Reg. Sess. (Minn. 2010); Missouri, see, e.g., H.B. 1585, 97th Gen. Assemb., 2d Sess. (Mo. 2014); Mississippi, see, e.g., S.B. 2790, 129th Leg., Reg. Sess. (Miss. 2014); New Jersey, see, e.g., A.B. 2157, 215th Leg., Reg. Sess. (N.J. 2013); New York, see, e.g., A.B. 2533 and S.B. 2286, 237th Leg., Reg. Sess. (N.Y. 2014); Ohio, H.B. 570, 129th Gen. Assemb., Reg. Sess. (Ohio 2012); Oregon, see, e.g., H.B. 4034, 78th Leg. Assemb., Reg. Sess. (Or. 2014); Rhode Island, see, e.g., H.B. 7383 and S.B. 2376, 2014 Leg., Reg. Sess. (R.I. 2014); Texas, see, e.g., H.B. 309, 83d Leg., Reg. Sess. (Tex. 2013); Virginia, see, e.g., H.B. 98, 2014 Leg., Reg. Sess. (Va. 2014); West Virginia, see, e.g., H.B. 2371, 81st Leg.,



Reg. Sess. (W. Va. 2014); Wisconsin, *see, e.g.*, A.B. 217 and S.B. 201, 101st Leg., Reg. Sess. (Wis. 2014). A Utah state senator initially proposed a sex-selective abortion ban but changed the proposed legislation to a bill to collect statistics on the reasons women report for seeking abortions. *See* S.B. 60, 60th Leg., Gen. Sess. (Utah 2013).

<sup>15</sup> Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. § 2(a)(1)(C) (2013).

<sup>16</sup> H.R. REP. NO. 112-496, at 8 (2012) (“U.S. census data and national vital statistics show some Americans are employing sex-selection techniques in their reproductive decisions. Certain communities within the United States are achieving sex ratios that are unnatural and statistically impossible without medical intervention. These unnatural sex ratios strongly favor the birth of males over females.”).

<sup>17</sup> United Nations Population Fund (UNFPA), *Guidance Note on Prenatal Sex Selection* 11 (2010), [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2010/guidenote\\_prenatal\\_sexselection.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2010/guidenote_prenatal_sexselection.pdf); *see also* Central Intelligence Agency (CIA), *Field Listing: Sex Ratio*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (last visited Apr. 21, 2014) (indicating that the worldwide sex ratio at birth is currently 1.07 males for every one female).

<sup>18</sup> *See* Amadu Jacky Kaba, *Sex Ratio at Birth and Racial Differences: Why Do Black Women Give Birth to More Females Than Non-Black Women?*, 112 AFR. J. REPROD. HEALTH 139 (2008), available at [http://works.bepress.com/cgi/viewcontent.cgi?article=1027&context=amadu\\_kaba](http://works.bepress.com/cgi/viewcontent.cgi?article=1027&context=amadu_kaba); Satoshi Kanazawa, *Why are Older Parents More Likely to Have Daughters*, PSYCHOLOGY TODAY (April 17, 2001), available at <http://www.psychologytoday.com/blog/the-scientific-fundamentalist/201104/why-are-older-parents-more-likely-have-daughters>.

<sup>19</sup> CIA, *Field Listing: Sex Ratio*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (last visited Apr. 21, 2014). Sex ratios at birth in the United States have been within the standard range since at least the 1940s. *See* T.J. Mathews & Brady E. Hamilton, *Trend Analysis of the Sex Ratio at Birth in the United States*, 53 NAT'L VITAL STAT. REP. 1, 2 (2005), available at [http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53\\_20.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_20.pdf).

<sup>20</sup> *See* F.J. Beernink, W.P. Dmowski & R.S. Ericsson, *Sex Preselection through Albumin Separation of Sperm*, 59 FERTIL. & STERIL. 382, 382 (1993) (stating that the Ericsson Method of sperm sorting uses the difference in swimming speed between the X and Y chromosome bearing sperm to separate the two groups, resulting in a 71% accuracy rate for the desired sex).

<sup>21</sup> *See* Susannah Baruch, David Kaufman & Kathy L. Hudson, *Genetic Testing of Embryos: Practices and Perspectives of U.S. IVF Clinics*, 89 FERTIL. & STERIL. 1053 (2006), available at <http://www.dnapolicy.org/resources/PGDSurveyReportFertilityandSterilitySeptember2006withcoverpages.pdf>.

<sup>22</sup> Susan Storck, *In Vitro Fertilization (IVF)*, MEDLINE PLUS (Feb. 26, 2012), <http://www.nlm.nih.gov/medlineplus/ency/article/007279.htm>.

<sup>23</sup> *See* Baruch, Kaufman & Hudson, *supra* note 21.

<sup>24</sup> *See, e.g.*, *Gender Selection*, SAN DIEGO FERTILITY CENTER, [http://www.sdfertility.com/gender\\_selection.htm](http://www.sdfertility.com/gender_selection.htm) (last visited Apr. 21, 2014); *Selecting the Sex of Your Baby*, FERTILITY AUTHORITY, <http://www.fertilityauthority.com/fertility-treatment/gender-selection-options/selecting-sex-your-baby> (last visited Apr. 21, 2014); *Fertility Clinic to Allow Sex Selection*, ABC NEWS, <http://abcnews.go.com/GMA/story?id=126683> (last visited Apr. 21, 2014).

<sup>25</sup> United States Census Bureau, *The Asian Population: 2010*, 2010 CENSUS BRIEFS 7 (Mar. 2012), <http://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>.

<sup>26</sup> *Preliminary 2012 Data—Clinic Tables and Data Dictionary*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/art/> (follow “Preliminary 2012 Data” hyperlink).

<sup>27</sup> *See* UNFPA, *supra* note 17.

<sup>28</sup> *See* Natalie Wolchover, *Why Are More Boys Born than Girls?*, LIVE SCIENCE (Sept. 9, 2011), <http://www.livescience.com/33491-male-female-sex-ratio.html>.

<sup>29</sup> Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. § 2(a)(1)(J) (2013)

<sup>30</sup> *See, e.g.*, S.B. 56, 69th Gen. Assemb., Reg. Sess. (Colo. 2013), available at [http://www.leg.state.co.us/clics/clics2013a/csl.nsf/billcontainers/7F8D8BCADA17D73C87257AEE0057B52C/\\$FILE/056\\_01.pdf](http://www.leg.state.co.us/clics/clics2013a/csl.nsf/billcontainers/7F8D8BCADA17D73C87257AEE0057B52C/$FILE/056_01.pdf).

<sup>31</sup> CIA, *Field Listing: Sex Ratio*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (last visited Apr. 21, 2014).

<sup>32</sup> See Associated Press, *Liechtenstein Rejects Plan to Legalize Abortion*, Sept. 18, 2011, available at <http://news.yahoo.com/liechtenstein-rejects-plan-legalize-abortion-133712436.html>.

<sup>33</sup> CIA, *Field Listing: Sex Ratio*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (last visited Apr. 21, 2014).

<sup>34</sup> *Id.*

<sup>35</sup> The Republic of Nauru has a sex ratio at birth of 0.84 but is not included in the table because it has a population of less than 10,000 people. See CIA, *Nauru*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html> (last visited Apr. 21, 2014).

<sup>36</sup> *House to Vote on Franks' Prenatal Nondiscrimination Act*, U.S. CONGRESSMAN TRENT FRANKS (May 31, 2012), <https://franks.house.gov/press-release/house-vote-franks-prenatal-nondiscrimination-act>.

<sup>37</sup> *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Hearing before the S. Comm. on the Constitution of the Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Steven W. Mosher, President, Population Research Institute), available at [http://judiciary.house.gov/\\_files/hearings/pdf/Mosher12062011.pdf](http://judiciary.house.gov/_files/hearings/pdf/Mosher12062011.pdf).

<sup>38</sup> See *id.*

<sup>39</sup> *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2009*, H.R. 1822, 111th Cong. § 2(a)(1)(J) (2009)

<sup>40</sup> See Ed O'Keefe, *Bill Banning 'Sex-Selection Abortions' Fails in the House*, THE WASHINGTON POST (May 31, 2012), [http://www.washingtonpost.com/politics/bill-banning-sex-selection-abortions-fails-in-the-house/2012/05/31/gJQAaWf5U\\_story.html](http://www.washingtonpost.com/politics/bill-banning-sex-selection-abortions-fails-in-the-house/2012/05/31/gJQAaWf5U_story.html) ("Several nations, including Canada, those of the United Kingdom, Germany and France, ban sex-selection abortions."); John Parkinson, *House Rejects Ban on Sex-Selection Abortions*, ABC NEWS (May 31, 2012), <http://abcnews.go.com/blogs/politics/2012/05/house-rejects-ban-on-sex-selection-abortions/> ("Canada, the United Kingdom, France, Germany, Switzerland, Sweden, Norway, Finland and the Netherlands all have laws banning sex-selection abortions.").

<sup>41</sup> Population and Family Planning Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2001, effective Sept. 1, 2002), at art. 35, translated in [http://english.gov.cn/laws/2005-10/11/content\\_75954.htm](http://english.gov.cn/laws/2005-10/11/content_75954.htm) ("Sex-selective pregnancy termination for non-medical purposes is strictly prohibited.").

<sup>42</sup> 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, translated in <http://www.hsph.harvard.edu/population/abortion/KOSOVO.abo.htm> ("Termination of pregnancy by the motive of selecting the gender of the embryo is prohibited.").

<sup>43</sup> See Prabhat Lamichhane et al., *Sex-Selective Abortion in Nepal: A Qualitative Study of Health Workers' Perspectives*, 21 WOMEN'S HEALTH ISSUES 37, 38 (2011), available at <http://www.globalaging.org/health/world/2011/Nepal%20AIDS.pdf> ("The 2002 law that legalized abortion in Nepal expressly prohibits sex determination and sex-selective abortion."); Center for Research on Environment Health and Population Activities, Kathmandu, Nepal, *Sex Selection: Pervasiveness and Preparedness in Nepal*, UNFPA 9 (Sept. 2007), <http://www.unfpa.org/gender/docs/studies/nepal.pdf> ("Conducting or facilitating sex-determination tests is punishable with imprisonment of 3-6 months, doing the same for sex-selective abortion is punishable with imprisonment of one year."). For an excerpt of Nepal's abortion laws, see Center for Reproductive Rights, *The World's Abortion Laws 2014* (2014), <http://worldabortionlaws.com/map/>.

<sup>44</sup> Decree No.104/2003/Nd-Cp Detailing and Guiding the Implementation of a Number of Articles of the Population Ordinance (promulgated by the Government of Vietnam, Sept. 16, 2003), at art. 10, translated in [www.hsph.harvard.edu/population/policies/vietnam2.03.doc](http://www.hsph.harvard.edu/population/policies/vietnam2.03.doc) ("To strictly prohibit acts of selecting fetus gender, including: . . . 3. Getting rid of fetuses for reason of gender selection by methods of abortion, supply and use of assorted chemicals, drugs and other measures."). In 2008, an amendment was made to the 2003 Population Ordinance followed by a new decree guiding its implementation. On July 23, 2013, a new Population Ordinance (no. 14) was passed by the National Assembly to consolidate the amendment into the 2003 Ordinance. The new ordinance still prohibits sex-selective abortion at art. 7, <http://thuvienphapluat.vn/archive/Van-ban-hop-nhat-14-VBHN-VPQH-nam-2013-hop-nhat-phap-lenh-dan-so-vb204828.aspx>.

<sup>45</sup> See, e.g., Albania, Law on Reproductive Health (2002), No. 8876, at art. 37; Canada, Assisted Human

Reproduction Act (S.C. 2004, c. 2), at art. 5(e); Germany, Act for Protection of Embryos (The Embryo Protection Act) (1990), at § 3; Great Britain, Human Fertilisation and Embryology Act (1990) (as amended), at Interpretation of mandatory requirements 10D; Netherlands, Embryos Act; New Zealand, Human Assisted Reproductive Technology Act (2004), 2004 N.Z. Stat. No. 92, at § 11; Oman, Code of Practice for Assisted Conception Unit (2002) of Muscat Hospital; Saudi Arabia, Regulation of IVF Units, Embryos, and Infertility Management No. 2870/1/12; South Korea, Bioethics and Safety Act (Revised as of June 5, 2008), Act No. 9100, at art. 13; Spain, Law 14/2006 of 26 May on Assisted Human Reproduction Techniques, at ch. VIII, art. 26(c)(10); Switzerland, Federal Act on Medically Assisted Reproduction (Reproductive Medicine Act) (1998), at art. 5(2); Taiwan, Artificial Reproduction Act, (promulgated under Presidential Decree Hua-Tsong 1 Yi No.09600035251 on Mar. 21, 2007), at art. 16; Tunisia, Tunisian National Committee on Medical Ethics Opinion No. 1 (Dec. 12, 1996) and Medically Assisted Procreation Decree No. 2003-1027 (Apr. 28, 2003).

<sup>46</sup> See *supra* note 41.

<sup>47</sup> See *infra* notes 114–115 and accompanying text. But also note that the Medical Termination of Pregnancy Act of 1971 (MTP Act), which allows for the termination of a pregnancy under certain specified conditions, does not include the sex of the fetus on its enumerated list of permissible reasons for the termination of the pregnancy. See The Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament, 1971 (India), available at <http://www.hsph.harvard.edu/population/abortion/india.abo.htm>. Sex-selective abortion is therefore technically not legal under the MTP Act. This is consistent with the Government of India's position. However, there is no explicit prohibition of sex-selective abortion in India and, in practice, abortion is widely available without restrictions

<sup>48</sup> Country Code (Eleventh Amendment) and Women's Right, No abortion on the basis of sex identification, <http://nepal.ohchr.org/en/resources/Documents/English/other/2009/March%2009/1.Country%20Code%20amendment.pdf>.

<sup>49</sup> See *Sweden Rules 'Gender-Based' Abortion Legal*, THE LOCAL (May 12, 2009), <http://www.thelocal.se/20090512/19392>.

<sup>50</sup> Countries are categorized as prohibiting sex-selective abortion only if their abortion laws specifically prohibit abortion for sex selection purposes.

<sup>51</sup> *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Hearing before the S. Comm. on the Constitution of the Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Steven W. Mosher, President, Population Research Institute), available at [http://judiciary.house.gov/\\_files/hearings/printers/112th/112-74\\_71599.PDF](http://judiciary.house.gov/_files/hearings/printers/112th/112-74_71599.PDF).

<sup>52</sup> 720 ILL. COMP. STAT. § 510/6-8 (2013); 18 PA. CONS. STAT. § 3204 (2013). In 1993, a federal district court issued a consent decree that enjoined enforcement of the Illinois ban's "total prohibition of abortions based on the sex of the fetus to pre-viability abortions." *Herbst v. O'Malley*, 84 C 5602, 1993 WL 59142, at \*2 (N.D. Ill. Mar. 2, 1993). The ban is still in place for post-viability sex-selective abortions and ostensibly for non-criminal sanctions for pre-viability sex-selective abortions. Importantly, the decree was issued subsequent to the five year period following the enactment of the ban in 1984 and thus does not affect our difference-in-differences analysis.

<sup>53</sup> The difference in sex ratios before (1979 to 1983) and after (1984 to 1988) the ban in Illinois were compared to differences in sex ratios during the same periods in Wisconsin, Iowa, Missouri, Kentucky and Indiana. Differences in sex ratios before (1984 to 1988) and after (1989 to 1993) the ban in Pennsylvania were compared to differences in sex ratios during the same periods in New York, New Jersey, Delaware, Maryland, West Virginia and Ohio.

<sup>54</sup> Woojin Chung & Monica Das Gupta, *Why is Son Preference Declining in South Korea? The Role of Development and Public Policy, and the Implications for China and India*, 19 (World Bank, Policy Research Working Paper No. 4373, 2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1020841](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1020841).

<sup>55</sup> *In-Soo Nam, South Korean Women Get Even, At Least in Number*, WALL STR. J., July 1, 2013, available at <http://blogs.wsj.com/korearealtime/2013/07/01/south-korean-females-get-even-at-least-in-number/> ("By 2012, the [sex] ratio had declined to 105.7, comparable to ratios in Western countries, including Canada, Germany and the U.S.").

<sup>56</sup> *The Worldwide War on Baby Girls: Technology, Declining Fertility and Ancient Prejudice Are Combining to Unbalance Societies*, ECONOMIST, Mar. 4, 2010, available at <http://www.economist.com/node/15636231>.

<sup>57</sup> Chung & Gupta, *supra* note 54, at 11.

<sup>58</sup> *Id.* at 13.

- <sup>59</sup> Kate Gilles & Charlotte Feldman-Jacobs, *When Technology and Tradition Collide: From Gender Bias to Sex Selection*, POPULATION REFERENCE BUREAU 1 (Sept. 2012), <http://www.prb.org/pdf12/gender-bias-sex-selection.pdf>.
- <sup>60</sup> *Gendercide: Killed, Aborted or Neglected, at Least 100m Girls Have Disappeared—and the Number Is Rising*, ECONOMIST, Mar. 4, 2010, available at <http://www.economist.com/node/15606229>.
- <sup>61</sup> *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Hearing before the S. Comm. on the Constitution of the Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Steven W. Mosher, President, Population Research Institute), available at [http://judiciary.house.gov/\\_files/hearings/printers/112th/112-74\\_71599.pdf](http://judiciary.house.gov/_files/hearings/printers/112th/112-74_71599.pdf).
- <sup>62</sup> Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. § 2(a)(1)(F) (2013)
- <sup>63</sup> See, e.g., *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Hearing before the S. Comm. on the Constitution of the Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Steven W. Mosher, President, Population Research Institute), available at [http://judiciary.house.gov/\\_files/hearings/printers/112th/112-74\\_71599.PDF](http://judiciary.house.gov/_files/hearings/printers/112th/112-74_71599.PDF).
- <sup>64</sup> H.R. 447 at § 2(a)(1)(F)
- <sup>65</sup> Molly Redden, *GOP Lawmaker: We Need to Ban Sex-Selective Abortions Because of Asian Immigrants: Supporters of a South Dakota Bill Say Asian Americans Don't Value Girls as Much as Boys*, MOTHER JONES (Feb. 5, 2014), <http://www.motherjones.com/politics/2014/02/south-dakota-stace-nelson-ban-sex-based-abortions-because-asian-immigrants> (quoting *House Judiciary Committee*, SOUTH DAKOTA PUBLIC BROADCASTING, available at <http://sdpb.sd.gov/SDPBPodcast/2014/hju19.mp3>).
- <sup>66</sup> Douglas Almond & Lena Edlund, *Son-Biased Sex Ratios in the 2000 United States Census*, 105 PNAS 5681 (2008).
- <sup>67</sup> *Id.* at 5681.
- <sup>68</sup> See, e.g., H.R. 447 at § 2(a)(1)(F) (citing the Almond and Edlund study as showing an “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”).
- <sup>69</sup> See, e.g., *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Hearing before the S. Comm. on the Constitution of the Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Steven W. Mosher, President, Population Research Institute), available at [http://judiciary.house.gov/\\_files/hearings/pdf/Mosher12062011.pdf](http://judiciary.house.gov/_files/hearings/pdf/Mosher12062011.pdf) (citing a study by Puri et al. of 65 immigrant Indian women in the United States).
- <sup>70</sup> H.R. 447 at § 2(a)(1)(O).
- <sup>71</sup> Pew Research Center, *Explaining Why Minority Births Now Outnumber White Births* (May 17, 2012), available at <http://www.pewsocialtrends.org/2012/05/17/explaining-why-minority-births-now-outnumber-white-births/>.
- <sup>72</sup> James Egan et al., *Distortions of Sex Ratios at Birth in the United States: Evidence for Prenatal Gender Selection*, 31 PRENAT. DIAGN. 560 (2011).
- <sup>73</sup> Joseph Abrevaya, *Are There Missing Girls in the United States? Evidence on Gender Preference and Gender Selection*, 1 AM. ECON. J. APPLIED ECON. 1 (2009).
- <sup>74</sup> Sunita Puri et al., *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*, 72 SOC. SCI. & MED. 1169 (2011).
- <sup>75</sup> Forthcoming from the 2012 National Asian American Survey, <http://naasurvey.com/>.
- <sup>76</sup> H.R. Rep. No. 112-496, at 15 (2012).
- <sup>77</sup> Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. (2013).
- <sup>78</sup> H.R. Rep. No. 112-496, at 15 (2012).
- <sup>79</sup> Representative Van Zant sponsored the Termination of Pregnancy Based on Sex or Race of Unborn Child Act, H.B. 845, 115th Leg., Reg. Sess. (Fla. 2013); Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and

Equal Opportunity for Life Act, H.B. 1327, 114th Leg., Reg. Sess. (Fla. 2012); and the Florida for Life Act, H.B. 1151 114th Leg., Reg. Sess. (Fla. 2012) (banning all abortion unless it is to save the life of the mother). Representative Dennis Kruse sponsored S.B. 183, 118th Gen. Assemb., Reg. Sess. (Ind. 2013) (prohibiting sex- and genetic-selective abortions); S.B. 290, 117th Gen. Assemb., Reg. Sess. (Ind. 2011) (prohibiting abortion except to save a mother's life); S.B. 116, 117th Gen. Assemb., Reg. Sess. (Ind. 2011) (prohibiting qualified health plans under the federal health care reform law from providing coverage for abortion). Senator Chris McDaniel sponsored S.B. 2790, 2014 Leg., Reg. Sess. (Miss. 2014) (prohibiting abortion of a human being based upon a determination of the gender or race of the human being); S.B. 2297, 2008 Leg., Reg. Sess. (Miss. 2008) (prohibiting abortion of a human being based upon a determination of the gender or race of the human being); S.B. 2692, 2012 Leg., Reg. Sess. (Miss. 2012) (prohibiting abortion of a fetus with a detectable heartbeat without informed written consent). Representative Bette Grande sponsored H.B. 1305, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (prohibiting sex- and genetic-selective abortions) and H.B. 1456, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (prohibiting abortions if fetal heartbeat is detected). Representative Allen Fletcher sponsored H.B. 17, H.B. 55 and H.B. 309, 83d Leg., Reg. Sess. (Tex. 2013) (prohibiting abortion based on the sex of the unborn child); H.B. 59, 83d Leg., Reg. Sess. (Tex. 2013) (prohibiting abortion after detection of a fetal heartbeat); H.B. 2364, 83d Leg., Reg. Sess. (Tex. 2013) (prohibiting abortion of an unborn child at or after 20 weeks post-fertilization).

<sup>80</sup> See *supra* note 15; Prenatal Nondiscrimination Act of 2012, H.R. 3541, 112th Cong. (2011); Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2009, H.R. 1822, 111th Cong. (2009); ARIZ. REV. STAT. § 13-3603.02 (2013).

<sup>81</sup> *Sanctity of Life: The Issue of Sanctity of Life Affects All of Us and Dealing with It Is an Important Part of My Work in Congress*, U.S. CONGRESSMAN TRENT FRANKS, <https://franks.house.gov/issue/sanctity-life> (last visited Apr. 21, 2014) (“I sponsored the Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2009. This bill would have eliminated all abortions based on the sex or race of the child inside the womb. . . . I plan to continue to re-introduce this legislation until it is passed through the Congress.”). Similarly, Representative John McCaherty, the sponsor of a proposed sex-selective abortion ban in Missouri, has been quoted as saying: “[O]bviously, I’m pro-life and my intent would be to limit the number of abortions happening. . . . [W]e can’t legally . . . stop her from aborting a child . . . but we can restrict what doctors do.” Sam Levin, *Abortion Ban Bill: John McCaherty Wants To Limit Sex Selection And Genetic Terminations*, RIVERFRONT TIMES BLOGS (Feb. 5, 2013), [http://blogs.riverfronttimes.com/dailyrft/2013/02/abortion\\_ban\\_bill\\_john\\_mccaherty.php](http://blogs.riverfronttimes.com/dailyrft/2013/02/abortion_ban_bill_john_mccaherty.php).

<sup>82</sup> See *Christopher Smith on Abortion*, ON THE ISSUES, [http://www.ontheissues.org/NJ/Christopher\\_Smith\\_Abortion.htm](http://www.ontheissues.org/NJ/Christopher_Smith_Abortion.htm) (last visited Apr. 21, 2014).

<sup>83</sup> *Legacy of Abortion: 40 Years of Victims*, CONGRESSMAN CHRIS SMITH (Jan. 25, 2013), <http://chrissmith.house.gov/news/documentsingle.aspx?DocumentID=317730>.

<sup>84</sup> Representative Bette Grande sponsored H.B. 1305, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (prohibiting sex- and genetic-selective abortions) and H.B. 1456, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (prohibiting abortions if fetal heartbeat is detected). Representative Allen Fletcher sponsored H.B. 17, H.B. 55, and H.B. 309, 83d Leg., Reg. Sess. (Tex. 2013) (prohibiting abortion based on the sex of the unborn child) and H.B. 59, 83d Leg., Reg. Sess. (Tex. 2013) (prohibiting abortion after detection of a fetal heartbeat).

<sup>85</sup> H.R. Rep. No. 112-496, at 50 (2012) (quoting Steven W. Mosher, *A New Front in the Abortion Wars: PreNDA Seeks Race and Sex-Based Equality for the Unborn*, 18 PRI REV. (Nov./Dec. 2008), available at <http://www.pop.org/content/a-new-front-in-abortion-wars-prenda-seeks-1602>).

<sup>86</sup> Steven G. Calabresi, *How to Reverse Government Imposition of Immorality: A Strategy for Eroding Roe v. Wade*, 31 Harv. J.L. & Pub. Pol’y 85, 89 (2008).

<sup>87</sup> See Americans United for Life, *Bans on Abortions for Sex Selection and Genetic Abnormalities: Model Legislation and Policy Guide* (2012), <http://www.aul.org/wp-content/uploads/2012/01/Sex-Selective-and-Genetic-Abnormality-Ban-2012-LG.pdf>.

<sup>88</sup> Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. § 2(a)(1)(D)–(E) (2013).

<sup>89</sup> *Id.* at § 2(a)(1)(E).

<sup>90</sup> ARIZ. REV. STAT. § 13-3603.02 (2013).

<sup>91</sup> H.B. 1162, 89th Leg., Reg. Sess. (S.D. 2014) (enacted).

<sup>92</sup> H.B. 845 and S.B. 1072, 115th Leg., Reg. Sess. (Fla. 2013).

<sup>93</sup> OKLA. STAT. TIT. 63, § 1-731.2 (2013).

<sup>94</sup> N.C. GEN. STAT. § 90-21.122 (2013).

<sup>95</sup> N.D. CENT. CODE § 14-02.1-04.1 (2013); H.B. 1585, 97th Gen. Assemb., 2d Sess. (Mo. 2014).

<sup>96</sup> H.B. 4034, 77th Leg. Assemb., Reg. Sess. (Or. 2014); H.B. 2371, 81st Leg., Reg. Sess. (W. Va. 2014).

<sup>97</sup> For enacted laws, see ARIZ. REV. STAT. § 13-3603.02 (2013). For considered bills, see H.R. 447, 113th Cong (2013); H.B. 845 and S.B. 1072, 115th Leg., Reg. Sess. (Fla. 2013); H.B. 1155 and S.B. 529, 2009 Leg., Reg. Sess. (Ga. 2010); H.B. 1430 and S.B. 183, 118th Gen. Assemb., Reg. Sess. (Ind. 2013); Assemb. B. 2157, 215th Leg., Reg. Sess. (N.J. 2012).

<sup>98</sup> *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2009*, H.R. 1822, 111th Cong. (2009).

<sup>99</sup> We omitted the Illinois (1984) and Pennsylvania (1989) sex-selective abortion bans since the legislative history of those laws do not specifically mention the global problem of “missing women” or the fact that Asian immigrants are performing son preference abortion in the United States. See Kalantry, *supra* note 3.

<sup>100</sup> We added the percentages of Republicans in each legislature that voted for the laws and divided by 12.

<sup>101</sup> We added the percentages of Democrats in each legislature that voted for the laws and divided by 12.

<sup>102</sup> See *Oklahoma: Political Info and Laws in Brief*, NARAL PRO-CHOICE AMERICA, <http://www.prochoiceamerica.org/government-and-you/state-governments/state-profiles/oklahoma.html> (last visited Apr. 21, 2014); *South Dakota: Political Info and Laws in Brief*, NARAL PRO-CHOICE AMERICA, <http://www.prochoiceamerica.org/government-and-you/state-governments/state-profiles/south-dakota.html> (last visited Apr. 21, 2014).

<sup>103</sup> For instance, in the same year that the Oklahoma state legislature passed its sex-selective abortion ban, it also passed—over an executive veto—a statute requiring women seeking an abortion to fill out an “Individual Abortion Form” and instituting a fine for failure to do so. See H.B. 3284, 52d Leg., 2d Sess. (Okla. 2010). The statute received the support of 42% of Democrats in the Oklahoma Senate and 66% of Democrats in the Oklahoma House of Representatives. See *HB 3284—Requiring Women Seeking Abortions to Answer Questionnaire—Key Vote*, VOTE SMART (Mar. 25, 2010), <https://votesmart.org/bill/11419/30534/requiring-women-seeking-abortions-to-answer-questionnaire#.U1hp4fldUuc>. And in the South Dakota state legislature, 95.7% of the legislators who voted in favor of the sex-selective abortion ban also voted to pass H.B. 1180, 89th Leg., Reg. Sess. (S.D. 2014)—a bill providing that no organization that places children up for adoption or that performs abortions may be registered as a pregnancy help center. See NARAL Pro-Choice South Dakota, *2014 Legislative Recap* (on file with authors).

<sup>104</sup> See *supra* note 102.

<sup>105</sup> See *Census Info India Dashboard*, CENSUS INFO INDIA 2011, <http://www.censusindia.gov.in/2011census/censusinfodashboard/index.html> (last visited Apr. 21, 2014). The Census of India does not collect data on sex ratios at birth. Instead, it measures the number of children age 0 to 6 throughout the country. This provides a broader perspective of the ratio of boys to girls, as it accounts for factors that may influence the ratio that are present after birth, such as nutrition and access to health care.

<sup>106</sup> The state of Haryana. See *Census Info India 2011*, CENSUS INFO INDIA 2011, <http://www.devinfolive.info/censusinfodashboard/> (follow “Sex Ratio, 0-6 yrs: Census Info” hyperlink; then search “Haryana”).

<sup>107</sup> The states of Mizoram and Meghalaya. See *Census Info India 2011*, CENSUS INFO INDIA 2011, <http://www.devinfolive.info/censusinfodashboard/> (follow “Sex Ratio, 0-6 yrs: Census Info” hyperlink; then search “Mizoram” and “Meghalaya”).

<sup>108</sup> See *Census Info India 2011*, CENSUS INFO INDIA 2011, <http://www.devinfolive.info/censusinfodashboard/> (follow “Sex Ratio: Census Info” hyperlink; then search “Kerala”). The child sex ratio (for 0 to 6 years) in Kerala in 2011 was 964 girls per 1,000 boys.

<sup>109</sup> See UNFPA, *supra* note 17.

<sup>110</sup> Interview with V. Mohini Giri, Chairperson, Guild of Service (Jan. 2014).

<sup>111</sup> See B.R. Siwal, *Preventative Measures for Elimination of Female Foeticide*, ELDIS 3, [http://www.eldis.org/fulltext/PREVENTIVE\\_MEASURES\\_FOR\\_FEMALE\\_FOETICIDE.pdf](http://www.eldis.org/fulltext/PREVENTIVE_MEASURES_FOR_FEMALE_FOETICIDE.pdf) (last visited Apr. 21, 2014).

<sup>112</sup> See Rita Patel, *The Practice of Sex Selective Abortion in India: May You Be the Mother of a Hundred Sons* 7 (Center for Global Initiatives, International Health Paper No. 7, Fall 1996), available at [http://cgi.unc.edu/uploads/media\\_items/the-practice-of-sex-selective-abortion-in-india-may-you-be-the-mother-of-a-hundred-sons.original.pdf](http://cgi.unc.edu/uploads/media_items/the-practice-of-sex-selective-abortion-in-india-may-you-be-the-mother-of-a-hundred-sons.original.pdf).

<sup>113</sup> *Id.*

<sup>114</sup> The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, No. 57, Acts of Parliament, 1994 (India), available at <http://pndt.gov.in/writereaddata/mainlinkFile/File50.pdf>.

<sup>115</sup> The Pre-Natal Diagnostic Techniques (Regulation And Prevention Of Misuse) Amendment Act, 2002, No. 14, 2003 (India), available at <http://pndt.gov.in/writereaddata/mainlinkFile/File50.pdf>.

<sup>116</sup> Interview with Dr. Amar Jesani, Trustee, Anusandhan Trust, and Editor, Indian Journal of Medical Ethics (Jan. 2014).

<sup>117</sup> United States Census Bureau, *Households and Families*, 2010 CENSUS BRIEFS 2 (Apr. 2010), <https://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf>.

<sup>118</sup> *Id.*

<sup>119</sup> *Children, Youth and Families & Socioeconomic Status*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/pi/ses/resources/publications/factsheet-cyf.aspx> (last visited Apr. 21, 2014).

<sup>120</sup> Chu Junhong, *Prenatal Sex Determination and Sex-Selective Abortion in Rural Central China*, 27 POP. & DEV. REV. 259 (2001), available at <http://www.jstor.org/stable/2695209>.

<sup>121</sup> See *id.*; see also CIA, *Field Listing: Sex Ratio*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (last visited Apr. 21, 2014).

<sup>122</sup> See Ma Jian, Op-Ed, *China's Brutal One-Child Policy*, N.Y. TIMES, May 21, 2013, available at [http://www.nytimes.com/2013/05/22/opinion/chinas-brutal-one-child-policy.html?\\_r=0](http://www.nytimes.com/2013/05/22/opinion/chinas-brutal-one-child-policy.html?_r=0).

<sup>123</sup> See Mara Hvistendahl, UNNATURAL SELECTION: CHOOSING BOYS OVER GIRLS, AND THE CONSEQUENCES OF A WORLD FULL OF MEN (PublicAffairs 2011).

<sup>124</sup> See Chi Zhou et al., *Son Preference and Sex-Selective Abortion in China: Informing Policy Options*, 57 INT. J. PUB. HEALTH 459, 459 (2012), available at <http://www.ncbi.nlm.nih.gov/pubmed/21681450>.

<sup>125</sup> See Shuzhuo Li, *Imbalanced Sex Ratio at Birth and Comprehensive Intervention in China*, UNFPA 6 (Oct. 2007), <http://www.unfpa.org/gender/docs/studies/china.pdf>.

<sup>126</sup> See Therese Hesketh, Li Lu & Zhu Wei Xing, *The Consequences of Son Preference and Sex-Selective Abortion in China and Other Asian Countries*, 183 CMAJ 1374 (2011), available at <http://www.cmaj.ca/content/183/12/1374.short>.

<sup>127</sup> Prohibits race-selective abortion as well.

<sup>128</sup> See *supra* note 2.

<sup>129</sup> Prohibits abortion for genetic-abnormalities as well.

THE UNIVERSITY OF  
 CHICAGO  
THE LAW SCHOOL  
INTERNATIONAL HUMAN  
RIGHTS CLINIC

 **napawf**  
NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM

**ANSIRH**  
ADVANCING NEW STANDARDS IN REPRODUCTIVE HEALTH 