Suspend the Rules And Pass the Bill, H.R. 3541, With Amendments

(The amendments strike all after the enacting clause and insert a new text and a new title)

112TH CONGRESS 2D SESSION H. R. 3541

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2011

Mr. Franks of Arizona (for himself, Mr. Cole, Mr. Huelskamp, Mr. Lankford, Mr. Fleming, Mr. Bishop of Utah, Mr. Pence, Mr. CHABOT, Mr. POSEY, Mr. GRAVES of Georgia, Mr. GOHMERT, Mr. Hultgren, Mr. Garrett, Mrs. Schmidt, Mr. Brady of Texas, Mr. Forbes, Mr. Wilson of South Carolina, Mr. Stutzman, Mrs. Lummis, Mr. Roe of Tennessee, Mr. Neugebauer, Mr. Harris, Mr. Yoder, Mr. WALBERG, Mr. BOREN, Mr. BARTLETT, Mr. SMITH of Texas, Mr. LIPIN-SKI, Mrs. Black, Mr. Boustany, Mr. Westmoreland, Mr. Pearce, Mr. Huizenga of Michigan, Mr. Ross of Florida, Mr. Kinzinger of Illinois, Mr. Burton of Indiana, Mr. Akin, Mr. Fortenberry, Mr. Jones, Mr. Duncan of Tennessee, Mrs. Blackburn, Mr. Crawford, Mr. McCaul, Mr. Broun of Georgia, Mr. Manzullo, Mr. McHenry, Mr. Latta, Mrs. Roby, Mr. Scalise, Mr. Farenthold, Mr. McCotter, Mr. Coble, Mr. Miller of Florida, Mr. Peterson, and Mr. Smith of New Jersey) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

1 Be it enacted by the Senate and House of Representa-2 tives of the United States of America in Congress assembled, 3 SECTION 1. SHORT TITLE. 4 This Act may be cited as the "Prenatal Nondiscrimination Act (PRENDA) of 2012". 6 SEC. 2. FINDINGS AND CONSTITUTIONAL AUTHORITY. 7 (a) FINDINGS.—The Congress makes the following 8 findings: 9 (1) Women are a vital part of American society 10 and culture and possess the same fundamental 11 human rights and civil rights as men. 12 (2) United States law prohibits the dissimilar 13 treatment of males and females who are similarly 14 situated and prohibits sex discrimination in various 15 contexts, including the provision of employment, 16 education, housing, health insurance coverage, and 17 athletics. 18 (3) Sex is an immutable characteristic ascer-19 tainable at the earliest stages of human development 20 through existing medical technology and procedures 21 commonly in use, including maternal-fetal blood-22 stream DNA sampling, amniocentesis, chorionic villus sampling or "CVS", and obstetric ultrasound. 23 24 In addition to medically assisted sex determination, 25 a growing sex determination niche industry has de1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

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

1	(5) The targeted victims of sex-selection abor-
2	tions performed in the United States and worldwide
3	are overwhelmingly female. The selective abortion of
4	females is female infanticide, the intentional killing
5	of unborn females, due to the preference for male
6	offspring or "son preference". Son preference is re-
7	inforced by the low value associated, by some seg-
8	ments of the world community, with female off-
9	spring. Those segments tend to regard female off-
10	spring as financial burdens to a family over their
11	lifetime due to their perceived inability to earn or
12	provide financially for the family unit as can a male.
13	In addition, due to social and legal convention, fe-
14	male offspring are less likely to carry on the family
15	name. "Son preference" is one of the most evident
16	manifestations of sex or gender discrimination in
17	any society, undermining female equality, and fuel-
18	ing the elimination of females' right to exist in in-
19	stances of sex-selection abortion.
20	(6) Sex-selection abortions are not expressly
21	prohibited by United States law or the laws of 47
22	States. Sex-selection abortions are performed in the
23	United States. In a March 2008 report published in
24	the Proceedings of the National Academy of
25	Sciences, Columbia University economists Douglas

1 Almond and Lena Edlund examined the sex ratio of 2 United States-born children and found "evidence of sex selection, most likely at the prenatal stage". The 3 data revealed obvious "son preference" in the form 5 of unnatural sex-ratio imbalances within certain seg-6 ments of the United States population, primarily 7 those segments tracing their ethnic or cultural ori-8 gins to countries where sex-selection abortion is 9 prevalent. The evidence strongly suggests that some 10 Americans are exercising sex-selection abortion prac-11 tices within the United States consistent with dis-12 criminatory practices common to their country of or-13 igin, or the country to which they trace their ances-14 try. While sex-selection abortions are more common 15 outside the United States, the evidence reveals that 16 female feticide is also occurring in the United 17 States. 18 (7) The American public supports a prohibition 19 of sex-selection abortion. In a March 2006 Zogby 20 International poll, 86 percent of Americans agreed 21 that sex-selection abortion should be illegal, yet only 22 3 States proscribe sex-selection abortion. 23 (8) Despite the failure of the United States to 24 proscribe sex-selection abortion, the United States 25 Congress has expressed repeatedly, through Con-

1 gressional resolution, strong condemnation of poli-2 cies promoting sex-selection abortion in the "Communist Government of China". Likewise, at the 3 2007 United Nation's Annual Meeting of the Com-5 mission on the Status of Women, 51st Session, the 6 United States delegation spearheaded a resolution 7 calling on countries to condemn sex-selective abor-8 tion, a policy directly contradictory to the permis-9 siveness of current United States law, which places 10 no restriction on the practice of sex-selection abor-11 tion. The United Nations Commission on the Status 12 of Women has urged governments of all nations "to 13 take necessary measures to prevent . . . prenatal 14 sex selection". 15 (9) A 1990 report by Harvard University econ-16 omist Amartya Sen, estimated that more than 100 million women were "demographically missing" from 17 18 the world as early as 1990 due to sexist practices, 19 including sex-selection abortion. Many experts be-20 lieve sex-selection abortion is the primary cause. 21 Current estimates of women missing from the world 22 range in the hundreds of millions. 23 (10) Countries with longstanding experience 24 with sex-selection abortion—such as the Republic of 25 India, the United Kingdom, and the People's Repub-

1	lic of China—have enacted restrictions on sex-selec-
2	tion, and have steadily continued to strengthen pro-
3	hibitions and penalties. The United States, by con-
4	trast, has no law in place to restrict sex-selection
5	abortion, establishing the United States as affording
6	less protection from sex-based feticide than the Re-
7	public of India or the People's Republic of China,
8	whose recent practices of sex-selection abortion were
9	vehemently and repeatedly condemned by United
10	States congressional resolutions and by the United
11	States Ambassador to the Commission on the Status
12	of Women. Public statements from within the med-
13	ical community reveal that citizens of other countries
14	come to the United States for sex-selection proce-
15	dures that would be criminal in their country of ori-
16	gin. Because the United States permits abortion on
17	the basis of sex, the United States may effectively
18	function as a "safe haven" for those who seek to
19	have American physicians do what would otherwise
20	be criminal in their home countries—a sex-selection
21	abortion, most likely late-term.
22	(11) The American medical community opposes
23	sex-selection. The American Congress of Obstetri-
24	cians and Gynecologists, commonly known as
25	"ACOG," stated in its 2007 Ethics Committee Opin-

1	ion, Number 360, that sex-selection is inappropriate
2	because it "ultimately supports sexist practices."
3	The American Society of Reproductive Medicine (
4	commonly known as "ASRM") 2004 Ethics Com-
5	mittee Opinion on sex-selection notes that central to
6	the controversy of sex-selection is the potential for
7	"inherent gender discrimination",the "risk of
8	psychological harm to sex-selected offspring (i.e., by
9	placing on them expectations that are too
10	high)," and "reinforcement of gender bias in so-
11	ciety as a whole." Embryo sex-selection, ASRM
12	notes, remains "vulnerable to the judgment that no
13	matter what its basis, [the method] identifies gender
14	as a reason to value one person over another, and
15	it supports socially constructed stereotypes of what
16	gender means." In doing so, it not only "reinforces
17	possibilities of unfair discrimination, but may
18	trivialize human reproduction by making it depend
19	on the selection of nonessential features of off-
20	spring." The ASRM ethics opinion continues, "ongo-
21	ing problems with the status of women in the United
22	States make it necessary to take account of concerns
23	for the impact of sex-selection on goals of gender
24	equality." The American Association of Pro-Life Ob-
25	stetricians and Gynecologists, an organization with

1	hundreds of members - many of whom are former
2	abortionists - makes the following declaration: "Sex
3	selection abortions are more graphic examples of the
4	damage that abortion inflicts on women. In addition
5	to increasing premature labor in subsequent preg-
6	nancies, increasing suicide and major depression
7	and increasing the risk of breast cancer in teens who
8	abort their first pregnancy and delay childbearing
9	sex selection abortions are often targeted at fetuses
10	simply because the fetus is female. As physicians
11	who care for both the mother and her unborn child
12	the American Association of Pro-Life Obstetricians
13	and Gynecologists vigorously opposes aborting
14	fetuses because of their gender." The President's
15	Council on Bioethics published a Working Paper
16	stating the council's belief that society's respect for
17	reproductive freedom does not prohibit the regula-
18	tion or prohibition of "sex control," defined as the
19	use of various medical technologies to choose the sex
20	of one's child. The publication expresses concern
21	that "sex control might lead todehumanization
22	and a new eugenics."
23	(12) Sex-selection abortion results in an un-
24	natural sex-ratio imbalance. An unnatural sex-ratio
25	imbalance is undesirable, due to the inability of the

- numerically predominant sex to find mates. Experts worldwide document that a significant sex-ratio imbalance in which males numerically predominate can be a cause of increased violence and militancy within a society. Likewise, an unnatural sex-ratio imbalance gives rise to the commoditization of humans in the form of human trafficking, and a consequent increase in kidnapping and other violent crime.
 - (13) Sex-selection abortions have the effect of diminishing the representation of women in the American population, and therefore, the American electorate.
 - (14) Sex-selection abortion reinforces sex discrimination and has no place in a civilized society.
 - (15) The history of the United States includes examples of sex discrimination. The people of the United States ultimately responded in the strongest possible legal terms by enacting a constitutional amendment correcting elements of such discrimination. Women, once subjected to sex discrimination that denied them the right to vote, now have suffrage guaranteed by the 19th amendment. The elimination of discriminatory practices has been and is among the highest priorities and greatest achievements of American history.

1	(16) Implicitly approving the discriminatory
2	practice of sex-selection abortion by choosing not to
3	prohibit them will reinforce these inherently dis-
4	criminatory practices, and evidence a failure to pro-
5	tect a segment of certain unborn Americans because
6	those unborn are of a sex that is disfavored. Sex-se-
7	lection abortions trivialize the value of the unborn on
8	the basis of sex, reinforcing sex discrimination, and
9	coarsening society to the humanity of all vulnerable
10	and innocent human life, making it increasingly dif-
11	ficult to protect such life. Thus, Congress has a
12	compelling interest in acting—indeed it must act—
13	to prohibit sex-selection abortion.
14	(b) Constitutional Authority.—In accordance
15	with the above findings, Congress enacts the following
16	pursuant to Congress' power under—
17	(1) the Commerce Clause;
18	(2) section 5 of the 14th amendment, including
19	the power to enforce the prohibition on government
20	action denying equal protection of the laws; and
21	(3) section 8 of article I to make all laws nec-
22	essary and proper for the carrying into execution of
23	powers vested by the Constitution in the Govern-
24	ment of the United States.

1	SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE
2	BASIS OF SEX.
3	(a) In General.—Chapter 13 of title 18, United
4	States Code, is amended by adding at the end the fol-
5	lowing:
6	"§ 250. Discrimination against the unborn on the
7	basis of sex
8	"(a) In General.—Whoever knowingly—
9	"(1) performs an abortion knowing that such
10	abortion is sought based on the sex or gender of the
11	child;
12	"(2) uses force or the threat of force to inten-
13	tionally injure or intimidate any person for the pur-
14	pose of coercing a sex-selection abortion;
15	"(3) solicits or accepts funds for the perform-
16	ance of a sex-selection abortion; or
17	"(4) transports a woman into the United States
18	or across a State line for the purpose of obtaining
19	a sex-selection abortion;
20	or attempts to do so, shall be fined under this title or im-
21	prisoned not more than 5 years, or both.
22	"(b) Civil Remedies.—
23	"(1) CIVIL ACTION BY WOMAN ON WHOM ABOR-
24	TION IS PERFORMED.—A woman upon whom an
25	abortion has been performed pursuant to a violation
26	of subsection (a)(2) may in a civil action against any

1	person who engaged in a violation of subsection (a)
2	obtain appropriate relief.
3	"(2) CIVIL ACTION BY RELATIVES.—The father
4	of an unborn child who is the subject of an abortion
5	performed or attempted in violation of subsection
6	(a), or a maternal grandparent of the unborn child
7	if the pregnant woman is an unemancipated minor,
8	may in a civil action against any person who en-
9	gaged in the violation, obtain appropriate relief, un-
10	less the pregnancy resulted from the plaintiff's
11	criminal conduct or the plaintiff consented to the
12	abortion.
13	"(3) Appropriate relief.—Appropriate relief
14	in a civil action under this subsection includes—
15	"(A) objectively verifiable money damages
16	for all injuries, psychological and physical, in-
17	cluding loss of companionship and support, oc-
18	casioned by the violation of this section; and
19	"(B) punitive damages.
20	"(4) Injunctive relief.—
21	"(A) In General.—A qualified plaintiff
22	may in a civil action obtain injunctive relief to
23	prevent an abortion provider from performing
24	or attempting further abortions in violation of
25	this section.

1	"(B) Definition.—In this paragraph the
2	term 'qualified plaintiff' means—
3	"(i) a woman upon whom an abortion
4	is performed or attempted in violation of
5	this section;
6	"(ii) any person who is the spouse or
7	parent of a woman upon whom an abortion
8	is performed in violation of this section; or
9	"(iii) the Attorney General.
10	"(5) Attorneys fees for plaintiff.—The
11	court shall award a reasonable attorney's fee as part
12	of the costs to a prevailing plaintiff in a civil action
13	under this subsection.
14	"(c) Loss of Federal Funding.—A violation of
15	subsection (a) shall be deemed for the purposes of title
16	VI of the Civil Rights Act of 1964 to be discrimination
17	prohibited by section 601 of that Act.
18	"(d) Reporting Requirement.—A physician, phy-
19	sician's assistant, nurse, counselor, or other medical or
20	mental health professional shall report known or suspected
21	violations of any of this section to appropriate law enforce-
22	ment authorities. Whoever violates this requirement shall
23	be fined under this title or imprisoned not more than 1
24	year, or both.

1	"(e) Expedited Consideration.—It shall be the
2	duty of the United States district courts, United States
3	courts of appeal, and the Supreme Court of the United
4	States to advance on the docket and to expedite to the
5	greatest possible extent the disposition of any matter
6	brought under this section.
7	"(f) Exception.—A woman upon whom a sex-selec-
8	tion abortion is performed may not be prosecuted or held
9	civilly liable for any violation of this section, or for a con-
10	spiracy to violate this section.
11	"(g) Protection of Privacy in Court Pro-
12	CEEDINGS.—
13	"(1) In general.—Except to the extent the
14	Constitution or other similarly compelling reason re-
15	quires, in every civil or criminal action under this
16	section, the court shall make such orders as are nec-
17	essary to protect the anonymity of any woman upon
18	whom an abortion has been performed or attempted
19	if she does not give her written consent to such dis-
20	closure. Such orders may be made upon motion, but
21	shall be made sua sponte if not otherwise sought by
22	a party.
23	"(2) Orders to parties, witnesses, and
24	COUNSEL.—The court shall issue appropriate orders
25	under paragraph (1) to the parties, witnesses, and

1 counsel and shall direct the sealing of the record and 2 exclusion of individuals from courtrooms or hearing 3 rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be 5 accompanied by specific written findings explaining 6 why the anonymity of the woman must be preserved 7 from public disclosure, why the order is essential to 8 that end, how the order is narrowly tailored to serve 9 that interest, and why no reasonable less restrictive 10 alternative exists. 11 "(3) PSEUDONYM REQUIRED.—In the absence 12 of written consent of the woman upon whom an 13 abortion has been performed or attempted, any 14 party, other than a public official, who brings an ac-15 tion under this section shall do so under a pseu-16 donym. 17 "(4) LIMITATION.—This subsection shall not be 18 construed to conceal the identity of the plaintiff or 19 of witnesses from the defendant or from attorneys 20 for the defendant. "(h) Definitions.— 21 22 "(1) The term 'abortion' means the act of using 23 or prescribing any instrument, medicine, drug, or 24 any other substance, device, or means with the in-25 tent to terminate the clinically diagnosable preg-

1	nancy of a woman, with knowledge that the termi-
2	nation by those means will with reasonable likelihood
3	cause the death of the unborn child, unless the act
4	is done with the intent to—
5	"(A) save the life or preserve the health of
6	the unborn child;
7	"(B) remove a dead unborn child caused
8	by spontaneous abortion; or
9	"(C) remove an ectopic pregnancy.
10	"(2) The term 'sex-selection abortion' is an
11	abortion undertaken for purposes of eliminating an
12	unborn child based on the sex or gender of the
13	child.".
14	(b) Clerical Amendment.—The table of sections
15	at the beginning of chapter 13 of title 18, United States
16	Code, is amended by adding after the item relating to sec-
17	tion 249 the following new item:
	"250. Discrimination against the unborn on the basis of sex.".
18	SEC. 4. SEVERABILITY.
19	If any portion of this Act or the application thereof
20	to any person or circumstance is held invalid, such inva-
21	lidity shall not affect the portions or applications of this
22	Act which can be given effect without the invalid portion
23	or application.

1 SEC. 5. RULE OF CONSTRUCTION.

- 2 Nothing in this Act shall be construed to require that
- 3 a healthcare provider has an affirmative duty to inquire
- 4 as to the motivation for the abortion, absent the
- 5 healthcare provider having knowledge or information that
- 6 the abortion is being sought based on the sex or gender
- 7 of the child.

Amend the title so as to read: "A bill to prohibit discrimination against the unborn on the basis of sex or gender, and for other purposes.".