



**Written Testimony of Catherine Glenn Foster, M.A., J.D.
President & CEO, Americans United for Life
In support of A.B. 182
Submitted to the Assembly Health Committee
May 7, 2019**

Dear Chair Sanfelippo and Members of the Committee:

I serve as President and CEO of Americans United for Life (AUL), America's original and most active pro-life advocacy organization. Founded in 1971, before the Supreme Court's decision in *Roe v. Wade*, AUL has been active in all fifty states and is known as the legal architect of the pro-life movement. AUL attorneys are experts on constitutional law and abortion jurisprudence. I appreciate the opportunity to submit legal testimony in support of A.B. 182, regarding abortion discrimination on the basis of sex, genetic abnormality, race, and national origin in Wisconsin.

A.B. 182 would protect baby girls and children diagnosed with Down syndrome from discrimination based on the fact that they are female or have a disability by prohibiting abortion on the sole basis of the unborn child's sex or diagnosis or potential diagnosis of Down syndrome or another congenital disability.

Abortions Based on Sex Are Discriminatory

A sex-selection abortion is an abortion undertaken to eliminate a child of an undesired sex. Importantly, the targeted victims of such abortions are overwhelmingly female. The practice of sex-selection abortion has drawn increasing attention in the U.S. and worldwide. The problem is so severe in some countries that, in 2005, the United Nations Population Fund (UNFPA) termed the practice "female infanticide." The UNFPA described this as a "symptom of pervasive social, cultural, political and economic injustices against women, and a manifest violation of women's human rights."¹ According to the UNFPA, recent studies have shown 126 million girls "were missing in 2010 due to gender-biased sex selection," which includes prenatal sex selection, and by 2020, "more than 142 million women will be missing."² Writer Mara Hvistendahl estimates the

¹ United Nations Population Fund Asia & Pacific Regional Offices, *Sex Imbalances at Birth: Current Trends, Consequences and Policy Implications* (Aug. 2012) <https://www.unfpa.org/sites/default/files/pub-pdf/Sex%20Imbalances%20at%20Birth.%20PDF%20UNFPA%20APRO%20publication%202012.pdf>.

² United Nations Population Fund, *Gender-Biased Sex Selection* <https://www.unfpa.org/gender-biased-sex-selection> (last visited May 6, 2019).

number is closer to 163 million worldwide.³ Even Hillary Clinton identified sex-selection abortions as part of the abuse against women. In a 2009 interview, then-Secretary Clinton stated that “unfortunately with technology, parents are able to use sonograms to determine the sex of a baby, and to abort girl children simply because they’d rather have a boy.”⁴

Some studies have found that sex-selection abortions are being performed in the United States.⁵ For example, researchers concluded that the most logical explanation for the irregularity in boy-birth percentages in the United States is gender selection. Given the high expense and rarity of advanced reproductive technologies such as *in vitro* fertilization (IVF) or sperm sorting, this gender selection is most likely taking place by abortion.⁶ Analysis also revealed that a deviation in favor of sons in Western society to be evidence of sex selection, most likely at the prenatal stage.⁷ One survey found that there still exists a moderate “tendency for American adults to express overall preferences for a boy over a girl.”⁸ Even the efforts of pro-abortion advocates to defeat bans on sex-selection abortions by claiming these abortions are rare acknowledge that sex-selection abortions happen.

Abortions Based on Genetic Abnormality Are Discriminatory

Prenatal testing is becoming increasingly common, and many diagnostic tests are intended to provide parents and healthcare providers with information about an unborn baby’s health and development, as well as the child’s sex. Prenatal testing can be a valuable tool for diagnosing and treating conditions that threaten the health or life of the mother and/or the child. However, in some cases and despite documented error rates for such testing, it is also being used as a precursor for aborting a child of an undesired sex or with potential genetic abnormalities. For example, some studies have indicated that somewhere between 50 and 90 percent of unborn children diagnosed

³ Mara Hvistendahl, *Unnatural Selection: Choosing Boys Over Girls, and the Consequences of a World Full of Men*, 5-11 (2011). Over the past few decades, approximately 300,000 to 700,00 girls in India were selectively aborted annually. Sital Kalantry, *How to Fix India’s Sex-Selection Problem*, *New York Times* (Jul. 27, 2017) <https://www.nytimes.com/2017/07/27/opinion/how-to-fix-indias-sex-selection-problem.html>; see also Nicholas Eberstadt, *The Global War Against Baby Girls*, *The New Atlantis* (2011). https://www.thenewatlantis.com/docLib/20111214_TNA33Eberstadt.pdf (noting sex-selective infanticide is also occurring in other countries as well, including China and Vietnam).

⁴ Mark Landler, *A New Gender Agenda*, *The New York Times Magazine*, Aug. 18, 2009 http://www.nytimes.com/2009/08/23/magazine/23clinton-t.html?_r=0.

⁵ See J. Copping, *Here’s the “Missing” Evidence for S.D.’s Sex-Selective Abortion Ban* (Apr. 1, 2014), <http://www.theamericanconservative.com/here-s-the-missing-evidence-for-sex-selective-abortion-bans-south-dakota/> (citing D. Almond & L. Edlund, *Son-Biased Sex Ratios in the 2000 United States Census*, *Proceedings of the Nat’l Acad. of Sci. of the U.S.A.* (2008) <http://www.pnas.org/content/105/15/5681.full>; J. Abrevaya, *Are There Missing Girls in the United States? Evidence from Birth Data*, *Amer. Econ. J. Applied Econ.* (2009), <http://www.aeaweb.org/articles.php?doi=10.1257/app.1.2.1>).

⁶ *Id.*

⁷ *Id.*

⁸ Frank Newport, *Slight Preference for Having Boy Children Persists in U.S.*, *Gallup* <https://news.gallup.com/poll/236513/slight-preference-having-boy-children-persists.aspx> (July 5, 2018).

with Down syndrome are aborted.⁹ Clearly, this chilling slide toward eugenics—specifically eliminating persons with certain hereditary characteristics—must be confronted.

The U.N. Committee on the Rights of Persons with Disabilities (CRPD), stated “[l]aws which explicitly allow for abortion on grounds of impairment violate the Convention on the Rights of Persons with Disabilities.” The CRPD rejected the idea that a prenatal diagnosis of a genetic abnormality is “incompatible with life” and “experience shows that assessments on impairment conditions are often false,” but even if the diagnosis turns out to be accurate, discriminating on the basis of genetic abnormalities “perpetuates notions of stereotyping disability as incompatible with a good life.”¹⁰ Congress found that “physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination.”¹¹ In fact, polling has shown that 99 percent of people with Down syndrome are happy with their lives, 99 percent of parents of Down syndrome children love their child, and 97 percent of children aged 9 to 11 with a sibling with Down syndrome love them and are proud of them.¹²

Wisconsin Has a Legitimate Interest in Preventing Discrimination Which Is Not Trumped by the “Right” to Abortion

It is far from clear that banning abortions on the basis of sex or genetic abnormality is unconstitutional. The U.S. Supreme Court has not held that a woman’s interest in abortion trumps the state’s interest in preventing disability discrimination, and federal lower courts are split on whether and how *Roe v. Wade* and *Planned Parenthood v. Casey* apply. By passing A.B. 182, Wisconsin can speak on the issue and affirm that this form of discrimination should not be protected under *Roe* or *Casey*.

A.B. 182, and bills like it, are about preventing discrimination on the basis of sex or genetic difference. “None of the Court’s abortion decisions holds that states are powerless to prevent abortions designed to choose the sex, race, and other attributes of children.”¹³ As stated in *Gonzales v. Carhart*, the Supreme Court “has confirmed the validity of drawing boundaries to prevent

⁹ Jaime L. Natoli et al., *Prenatal Diagnosis of Down Syndrome: A Systematic Review of Termination Rates (1995-2011)*, 32 *PRENAT. DIAGN.* 142 (2012); Caroline Mansfield et al., *Termination Rates After Prenatal Diagnosis of Down Syndrome, Spina Bifida, Anencephaly, and Turner and Klinefelter Syndromes: A Systematic Literature Review*, *Prenatal Diagnosis* (1999); D.W. Brit et al., *Determinants of Parental Decisions After the Prenatal Diagnosis of Down Syndrome: Bringing in Context*, *AM. J. MED. GENETICS* (1999).

¹⁰ See, e.g., Susan Yoshihara, *Another U.N. Committee Says Abortion May Be a Right, But Not on Basis of Disability*, Center for Family and Human Rights, Oct. 26, 2017, available at https://c-fam.org/friday_fax/another-un-committee-says-abortion-may-right-not-basis-disability/ (last visited May 6, 2019).

¹¹ 42 U.S.C. § 12101(a).

¹² <https://lozierinstitute.org/improving-joyful-lives-societys-response-to-difference-and-disability/>.

¹³ *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of the Ind. State Dep’t of Health*, 917 F.3d 532 (7th Cir. 2018) (Easterbrook, J. dissenting).

certain practices that extinguish life and are close to actions that are condemned.”¹⁴ Discriminating on the basis of sex or genetic disability have been condemned; it is thus natural to extend this protection against discrimination to life in the womb. If the State has an interest in stopping discrimination based on gender or disability, the State should also have an interest in preventing discrimination on the basis of gender or disability by stopping eugenics.

Today, I strongly encourage this Committee to take a step toward preventing discrimination based on the child’s gender, genetic disability, race, or national origin, and pass A.B. 182. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine", with a large, stylized initial "C" that loops around the start of the name.

Catherine Glenn Foster, Esq.
President & CEO
Americans United for Life

¹⁴ 550 U.S.124 at 158 (2007).