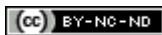


THE CONSTITUTIONALITY OF
PENNSYLVANIA'S SEX-SELECTIVE ABORTION
BAN POST-*DOBBS* AND ITS DISCRIMINATORY
IMPACT ON ASIAN AMERICAN PACIFIC
ISLANDER WOMEN

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THE CONSTITUTIONALITY OF PENNSYLVANIA'S SEX-SELECTIVE ABORTION BAN POST-*DOBBS* AND ITS DISCRIMINATORY IMPACT ON ASIAN AMERICAN PACIFIC ISLANDER WOMEN

Cindy Hsieh*

INTRODUCTION

Even though *Dobbs v. Jackson Women's Health* has altered women's reproductive landscape, there is still more reproductive freedom of choice for women to lose in states where abortion access is still legal. Selective abortion bans prohibit the use of abortion for a specific reason. Accordingly, sex-selective abortion bans prohibit the sex selection of a fetus as a reason for obtaining an abortion. These bans are one of the most proposed abortion bans in the United States.¹ Rooted in cultural stereotypes and misunderstandings of certain ethnic groups and their supposed preference for male offspring, they reflect complex social dynamics. Thus, the existence of sex-selective abortion bans in states where abortion is still legal creates a discriminatory and prejudicial impact on Asian American Pacific Islander (AAPI) women. Protections for women are lacking in these states and there has been no effort to challenge these discriminatory abortion bans. Pennsylvania is one of the largest states to adopt a problematic sex-selective abortion ban.² The ban is unconstitutional under Pennsylvania law, and opponents should challenge it as such.

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¹ Jennifer Chou & Shivana Jorawar, *Silently Under Attack: AAPI Women and Sex-Selective Abortion Bans*, 22 *ASIAN AM. L.J.* 105, 105 (2015) [hereinafter *Abortion Bans*].

² *See id.* at 107.

Accordingly, this Note will discuss sex-selective abortion bans, specifically Pennsylvania's, and how their discriminatory purpose and impact should be deemed unconstitutional under state law. Part I explains sex-selective abortion bans and their legislative history. It gives an overview of currently enacted bans across the United States, with a greater focus on Pennsylvania's sex-selective abortion ban. Part II addresses how sex-selective abortion bans negatively impact AAPI women, including how AAPI women are subjected to racial profiling by healthcare providers, in addition to increased potential criminal penalties and stigma in the community. Part III examines arguments against sex-selective abortion bans and explains how these bans ultimately fail to discourage sex-selection abortions. The focus of these bans is often on less effective solutions if their goal is truly to minimize gender discrimination. Examples of other less discriminatory options that legislators have chosen to not regulate are given. Part IV offers and analyzes certain policy recommendations for what can be done to challenge the constitutionality of Pennsylvania's sex-selective abortion ban. Among some of the constitutional protections for women against selective abortion bans are the Fourteenth Amendment Equal Protection Clause and Pennsylvania's Equal Rights Amendment. Last, this Note will analyze the impact of *Dobbs* specifically on Pennsylvania law.

I. UNDERSTANDING SELECTIVE ABORTION BANS

Under the Due Process Clause of the Fifth and Fourteenth Amendments, women were granted the right to choose an abortion, recognized previously by *Roe v. Wade* in 1973.³ The right was fully stripped away on June 24, 2022, after the Supreme Court released its decision in *Dobbs v. Jackson Women's Health*, changing the landscape of women's health.⁴ The constitutional right to abortion was overturned.⁵ The majority ruling stated that the decision on abortion rights would be returned to individual states.⁶ This decision left behind an opening for states to individually attack the vulnerability of women's rights. In just a few months after *Dobbs*, laws banning abortion have gone into effect in nearly a quarter of states.⁷

³ 410 U.S. 113, 154 (1973).

⁴ 142 S. Ct. 2228, 2240–43 (2022) (holding that since states have historically developed their own abortion regulations independently, *Roe v. Wade*, 410 U.S. 113 (1972), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) were inappropriate judicial usurpations of state power).

⁵ *Id.*

⁶ *Id.*

⁷ Elizabeth Nash & Isabel Guarnieri, *Six Months Post-Roe, 24 US States Have Banned Abortion or Are Likely to Do So: A Roundup*, GUTTMACHER INST. (Jan. 10, 2023), <https://www.guttmacher.org/2023/01/>

However, the degradation of women's healthcare rights has culminated over time. Even before *Dobbs*, many states enacted selective abortion bans, prohibiting women from obtaining an abortion for specific reasons (e.g., sex, race, or disability).⁸ Thus, post-*Dobbs*, eleven states with selective abortion bans face a unique impasse.⁹ The women in these states can still legally obtain an abortion, but simultaneously face further niche barriers to abortion access.¹⁰ Generally, these states' laws prohibit and threaten medical professionals from performing an abortion if they believe that a woman is seeking to abort based on the fetus's sex.¹¹

A. *The History of Sex-Selective Abortion Bans*

Sex-selective abortion bans (SSABs) are the second most proposed abortion bans in the United States.¹² These bans target abortion predicated on terminating a pregnancy based on the predicted sex of the fetus and are often justified under a gender discrimination elimination tactic.¹³ SSABs are most prevalent in countries where there is a noticeable gender bias that manifests a preference, specifically for sons.¹⁴ For instance, in a few East and South Asian countries (e.g., China, Vietnam, India),¹⁵ skewed sex ratios at birth have uncovered a widespread practice of sex selection resulting in a much higher number of boys than girls.¹⁶ However, this trend contrasts greatly with the United States. In the United States, there is no conclusive evidence that pregnant people are engaging in the practice of selecting the sex of

six-months-post-roe-24-us-states-have-banned-abortion-or-are-likely-do-so-roundup#:~:text=As%20of%20September%201%2C%202023,in%20Iowa%2C%20Utah%20and%20Wyoming.

⁸ See generally Tori Gooder, *Selective Abortion Bans: The Birth of a New State Compelling Interest*, 87 U. CIN. L. REV. 545 (2018).

⁹ See *Abortion Bans*, *supra* note 1.

¹⁰ *Id.*

¹¹ Gooder, *supra* note 8, at 545.

¹² *Abortion Bans*, *supra* note 1, at 105.

¹³ *Selective Abortion*, BBC: ETHICS GUIDE, https://www.bbc.co.uk/ethics/abortion/medical/selective_1.shtml (last updated 2014).

¹⁴ *Abortion Bans*, *supra* note 1.

¹⁵ Joseph Chamie, *Six Asian Nations Lead in Seriously Skewed Sex Ratios at Birth*, PASSBLUE (Sept. 28, 2016), <https://www.passblue.com/2016/09/28/six-asian-nations-lead-in-seriously-skewed-sex-ratios-at-birth>.

¹⁶ *Abortion Bans*, *supra* note 1.

their fetus.¹⁷ Further, there is inconclusive evidence that immigrants from these East and South Asian countries in the United States are continuing the same sex-selective practices and obtaining sex-selective abortions.¹⁸ Therefore, these bans target a non-existent problem. These bans not only burden the woman seeking to make a choice about her body, but also burden providers, who are forced to question a patient's personal reasons for seeking an abortion.¹⁹

Even more concerning is the distrust and stigmatizing behavior against Asian American communities that result from SSABs.²⁰ While these bans do not explicitly name Asian American women as the target population, they have been primarily implemented in states with the fastest-growing Asian American Pacific Islander populations.²¹ The term AAPI encompasses multiple ethnicities and thus multiple cultures.²² Currently, eleven states “ban abortions for the reason of sex selection at some point in [the] pregnancy.”²³ There are other states, including Illinois, Indiana, and Kentucky, that have attempted to enact SSAB legislation, but the policy has either been temporarily or permanently enjoined by a court order.²⁴ States that have implemented or sought to implement SSABs (North Dakota, South Dakota, North Carolina, Indiana, and Kentucky) were also among the top ten states with the fastest-

¹⁷ *Id.*

¹⁸ *Abortion Bans*, *supra* note 1.

¹⁹ *Id.*

²⁰ *See id.*

²¹ Abby Budiman & Neil G. Ruiz, *Asian Americans Are the Fastest-Growing Racial or Ethnic Group in the U.S.*, PEW RSCH. CTR. (Apr. 9, 2021), <https://www.pewresearch.org/short-reads/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s> (illustrating that all states that have passed SSABs as of August 1, 2021 experienced a 50% to 200% increase in the population of Asian Americans from 2000–19).

²² Katherine Gallagher Robbins, *State Abortion Bans Could Harm More than 1.3 Million Asian American and Pacific Islander Women*, NAT'L P'SHIP FOR WOMEN & FAMS.: BLOG (Aug. 30, 2022), <https://nationalpartnership.org/state-abortion-bans-could-harm-more-than-1-3-million-asian-american-and-pacific-islander-women>. AAPI does not just capture East Asians. AAPI includes, but is not limited to, the following: Native Hawaiian, Samoan, Tongan, Guamanian and Chamorro, Chinese, Taiwanese, Japanese, Filipina, Indian, Korean, Vietnamese, Bhutanese, Nepalese, Cambodian, Hmong, Laotian, Thai, Bangladeshi, Burmese, Indonesian, Pakistani, Sri Lankan, multiethnic and not specifically classified Pacific Islander ethnicities. *See Census Data and API Identities*, ASIAN PACIFIC INST. ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/resources/census-data-api-identities> (last visited Nov. 1, 2023).

²³ *Abortion Bans*, *supra* note 1. The eleven states include Arizona, Arkansas, Kansas, Mississippi, Missouri, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, and Tennessee. *Id.*

²⁴ *Abortion Bans*, *supra* note 1.

growing Asian American populations.²⁵ Additionally, among the top ten states with the fastest Native Hawaiian and other Pacific Islander population growth were North Dakota, Arkansas, Indiana, Oklahoma, South Dakota, and Kentucky, states which have implemented SSABs.²⁶

1. Weakness of Abortion Rights Before *Dobbs*

The erosion of abortion rights occurred even before *Dobbs* and largely contributed to the existence of SSAB legislation. The initial presumption post-*Roe* was that all state regulations on pre-viability abortions would be per se unconstitutional.²⁷ However, the ruling in *Casey* paved the way for more state regulation, as long as the state's compelling interest was in favor of the woman's health and fetal life promotion.²⁸ These regulations peaked around 2009, as twenty-one states and even the federal government considered SSABs.²⁹ For instance, in 2011, Arizona became one of the first states to enact a SSAB with strict regulations against physicians.³⁰ The legislation threatened a class three felony charge if the physician were to knowingly perform an "abortion . . . based on the sex or race of the child."³¹ The bill's legislative history contained evidence that healthcare providers were targeting African American and Hispanic women in abortion care and therefore needed "protection" through this legislation.³² Yet, this race-selective abortion prohibition triggered an NAACP (National Association for the Advancement of Colored People) chapter in Maricopa County to enjoin the Arizona selective abortion legislation, stating that the legislation stigmatized African

²⁵ See *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html> (choose "How has each group changed since 2010?" then select "Asian alone or in combination" from the "Group" drop down menu in the middle).

²⁶ *Id.*

²⁷ See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 876 (1992) (explaining the change of the trimester framework for abortion access to the "undue burden" test which meant a state could not restrict abortion access of women if it placed an "undue burden" on her).

²⁸ Gooder, *supra* note 8, at 552.

²⁹ See generally *id.*

³⁰ *Id.* at 553.

³¹ ARIZ. REV. STAT. ANN. § 13-3603.02(A)(1) (2011).

³² Caitlin Coakley Beckner, *Abortion Bill Sponsor Unfazed by Doubts Cast on His Evidence*, ARIZ. CAPITOL TIMES (Feb. 25, 2011), <https://azcapitoltimes.com/news/2011/02/25/abortion-bill-sponsor-unfazed-by-doubts-cast-on-his-evidence>.

American and Hispanic women.³³ However, the court dismissed this case after finding a lack of standing and held that only “those persons who are personally denied equal treatment by the challenged discriminatory conduct” may have standing for a “stigmatizing injury.”³⁴ Currently, Arizona is one of four states which have sex and race-selective abortion legislation.³⁵

B. *Issues Facing Sex-Selective Abortion Bans*

Studying historical legislative discussions surrounding SSABs under consideration in state legislatures and the U.S. Congress reveals a common thread of flawed reasoning. Proponents of SSABs tend to extrapolate skewed evidence of global sex ratio trends from countries like India and China to support enacting selective ban legislation in the United States. These legislators purport that there is such an overwhelming preference for sons in Asian countries, like India and China, that the immigrant women from these countries must also have consistent preferences even after they live in the United States.³⁶ For example, former Representative Don Hagger from South Dakota stated,

Let me tell you, our population in South Dakota is a lot more diverse than it ever was. There are cultures that look at a sex-selection abortion as being culturally okay. And I will suggest to you that we are embracing individuals from some of those cultures in this country, or in this state. And I think that’s a good thing that we invite them to come, but I think it’s also important that we send a message that this is a state that values life, regardless of its sex.³⁷

As another example, the Arizona committee hearings surrounding the consideration of the state’s selective abortion legislation referenced this same erroneous presumption. Former Representative Steve Montenegro asserted that “a report by a Harvard University economist estimated that more than 100 million women were

³³ NAACP v. Home, 626 F. App’x 200, 201 (9th Cir. 2015).

³⁴ *Id.* (quoting *Allen v. Wright*, 468 U.S. 737, 755 (1984)).

³⁵ *Abortion Bans*, *supra* note 1 (showcasing that the other three states are Mississippi, Missouri, and Tennessee, which also have abortion bans for genetic anomalies).

³⁶ See Sital Kalantry, *Sex-Selective Abortion Bans: Anti-Immigration or Anti-Abortion?*, 16 GEO. J. INT’L AFFS. 140, 147–48 (2015).

³⁷ Molly Redden, *GOP Lawmaker: We Need to Ban Sex-Selective Abortions Because of Asian Immigrants*, MOTHER JONES (Feb. 25, 2014), <https://www.motherjones.com/politics/2014/02/south-dakota-stace-nelson-ban-sex-based-abortions-because-asian-immigrants>.

demographically missing from the world as early as the 1990s due to certain practices, including sex selection abortion.³⁸ Furthermore, even the federal bill that would have enacted a sex-selective abortion ban in the United States stated, “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.”³⁹

However, the only piece of evidence of sex-selection abortion in the United States that continues to be widely circulated as “proof” is a 2008 study conducted by the National Academy of Sciences, which concluded that the sex ratios at birth of foreign-born Chinese, Indians, and Koreans prove that sex-selective practices for sons are occurring in the United States.⁴⁰ The empirical study purported results that people from India, China, and Korea may seek sex selection of boys when they already have two girls.⁴¹ However, this evidence has since been dismantled. The data utilized in the study was from the 2000 United States Census, which at the time of the study’s publication was nearly a decade old.⁴² In addition, there were issues with the way the study was conducted. First, the study failed to examine sex ratios at birth among Asians born in the United States and failed to show a preference for sons for first births of foreign-born Chinese, Indians, and Koreans.⁴³ Most importantly, the study relied on data from a national level and did not indicate the sex-selected preference of children in any particular state for male-biased sex ratios at birth.

In reality, a recent analysis of national data on sex ratios at birth of foreign-born Chinese, Indians, and Koreans illustrates that these groups actually have more daughters on average than White Americans.⁴⁴ Additionally, the study analyzed first

³⁸ *Minutes of Meeting: Hearing Before the H. Comm. on Health & Hum. Servs.*, 50th Leg., 1st Reg. Sess. (Ariz. 2011) (statement of Rep. Steve Montenegro).

³⁹ Prenatal Nondiscrimination Act of 2013, H.R. 447, 113th Cong. § 2(a)(1)(F) (2013).

⁴⁰ See BRIAN CITRO, JEFF GILSON, SITAL KALANTRY & KELSEY STRICKER, REPLACING MYTHS WITH FACTS: SEX-SELECTIVE ABORTION LAWS IN THE UNITED STATES 1 (2014), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2536&context=facpub>.

⁴¹ See Douglas Almond & Lena Edlund, *Son-Biased Sex Ratios in the 2000 United States Census*, 105 PROC. NAT’L ACAD. SCIS. 5681, 5681–82 (2008).

⁴² *Id.* at 5681.

⁴³ *Id.* at 5681–82.

⁴⁴ See generally CITRO ET AL., *supra* note 40 (discussing the prevalence of sex selection in the United States).

births among foreign-born Chinese, Indian, and Korean families in the United States and found that there was an equal number of boys and girls at a sex ratio of 1.00.⁴⁵ However, White Americans had a sex ratio of 1.06 at their first birth, meaning they were 6% more likely to give birth to a son than a daughter.⁴⁶ Furthermore, recent polling data among Asian Americans in the United States refutes the presence of a cultural son preference; in 2012, the National Asian American Survey on Asian and Pacific Islander opinions participants were asked: “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?”.⁴⁷ The results revealed that 92% of Chinese, 92% of Indians, and 89% of Koreans surveyed said that “[i]t doesn’t matter or they don’t care.”⁴⁸

C. *The Uniqueness of Pennsylvania’s Sex-Selective Abortion Ban Explained*

In 1989, Pennsylvania (“PA”) became the second state in the United States to enact an SSAB, decades before the height of the anti-abortion legislative movement.⁴⁹ It is precisely because of the timing of the PA SSABs (occurring before state-wide anti-abortion group strategies) that legislative discussions in PA did not focus on global sex ratios and foreign country practices as evidence for pushing the bill forward.⁵⁰ The supporters of the bill focused on the United States and not foreign countries.⁵¹ The main sponsor of the bill, former Representative Stephen Friend, cited a *New York Times* poll in support of passing the bill.⁵² The poll stated that 20% of medical geneticists surveyed provided counseling for sex-selective abortions at some point; thus “persuading” proponents to argue that the SSABs are relatively common.⁵³ Yet, Representative Friend stated that even if the poll was wrong, and there was no evidence of sex-selective abortions in practice, the prohibition would

⁴⁵ *Id.* at 16.

⁴⁶ *Id.*

⁴⁷ *Id.* at 20.

⁴⁸ *Id.*

⁴⁹ Kalantry, *supra* note 36, at 144.

⁵⁰ See H.R. 173-65, 1989 Sess., at 1743–44 (Pa. 1989).

⁵¹ *Id.*

⁵² *Id.* at 1744.

⁵³ *Id.*

do “no harm whatsoever.”⁵⁴ However, underlying racial preconceptions were addressed through one Senator during these deliberations. Former Senator Karen Ritter, an opponent of the bill, stated “[t]his is a terrible practice in other countries like India and China, but we do not do it here.”⁵⁵ Overall, there was not only a lack of evidence provided in support of the PA SSAB during deliberations, but the evidence presented was faulty. The Pennsylvania Pro-Life Federation provided testimony, which solely included stories from some women in the United States who had obtained a sex-selective abortion, as support for the SSAB.⁵⁶ The group admitted that “no one knows exactly how many sex-selection abortions have been performed in the U.S.”⁵⁷ However, the group still reiterated its conclusion that “there are indications that the demand for sex testing are [sic] on the increase” without any further data to support this faulty assertion.⁵⁸ It is important to note that the absence of discussions around stereotypes and global sex-selective practices in PA legislative deliberations does not correlate to an absence of stereotypical thinking among those legislators. The lack of evidence and discussion (that women in the state were engaging in sex selection) in PA’s sex-selective abortion ban only showcases further proof that the law not only serves an unnecessary purpose but a discriminatory one. After all, the rise of such “reverse law reform,” by citing practices of other countries as proof to push legislation in the United States, clearly succeeded for a reason. The correlation between the rise of SSABs in states with the rise of the Asian American population being one of the fastest-growing racial groups in the country is also a trend that should not be disregarded.⁵⁹

⁵⁴ *Id.*

⁵⁵ *Id.* at 1749.

⁵⁶ SITAL KALANTRY, WOMEN’S HUMAN RIGHTS AND MIGRATION: SEX-SELECTIVE ABORTION LAWS IN THE UNITED STATES AND INDIA 113 (2017) (quoting *In Support of H.B. 1979: “1989 Abortion Control Act”*: Hearing on H.B. 1979 Before the H. Comm. on the Judiciary, H.R. 173-65, 1989 Sess. 5 (Pa. 1989) (testimony of Pennsylvania Pro-Life Federation)). The Pennsylvania Pro-Life Federation is a non-profit organization dedicated to promoting the “the dignity and value of human life from conception to natural death.” *Mission Statement*, PA. PRO LIFE FED’N, <https://www.paprolife.org/about> (last visited Nov. 2, 2023). The organization advocates for pro-life policies and candidates.

⁵⁷ KALANTRY, *supra* note 56, at 113 (quoting *In Support of H.B. 1979: “1989 Abortion Control Act”*: Hearing on H.B. 1979 Before the H. Comm. on the Judiciary, H.R. 173-65, 1989 Sess. 5 (Pa. 1989) (testimony of Pennsylvania Pro-Life Federation)).

⁵⁸ *Id.*

⁵⁹ See Alex Fitzpatrick & Kavya Beherah, *America’s Fastest-Growing Demographic Groups*, AXIOS (June 29, 2023), <https://www.axios.com/2023/06/29/fastest-growing-demographics>.

1. The Impact of *Dobbs* on SSABs

Post-*Dobbs*, abortion access is left to states. Thus, sex-selective prohibitions may not be viewed as an issue anymore because states can ban abortion without justification; the federal safeguards that *Roe* and *Casey* previously had in place no longer apply. One could argue that a selective abortion ban may be moot if a state can completely ban abortion, as the particular rationale behind the ban would no longer hold legal significance. However, this concern is not the case for a few states that fall into a “gray area” where SSABs are still extremely problematic. The “gray area” occurs in states where women can still legally obtain an abortion, but face niche barriers to abortion access (such as SSABs). Pennsylvania is one of these states. Therefore, despite *Dobbs*, women in PA still have access to safe and legal abortions. They are still susceptible to SSABs.⁶⁰ While to outsiders the ban may sound well-intentioned as a means to prevent gender discrimination, the bans are often referred to as a “wolf in sheep’s clothing” because of the push to perpetuate disparate impacts AAPI women already experience behind a false pretense of “good” gender discrimination intent.⁶¹ As noted in the above discussion of other states, legislators who sponsor and support these laws purport that these bans are necessary to stop sex-selected births of only sons and claim that all Asian American women in the United States “are exercising sex selecti[ve] abortion practices . . . consistent with discriminatory practices common to their country of origin.”⁶² However, these same legislators, including those in PA, fail to ban other methods of sex selection. For example, sex-selective artificial insemination procedures are still legally available in the United States and are even actively promoted through fertility clinics.⁶³ Additionally, the lack of legal action to address the constitutionality of SSABs, specifically in PA, has furthered legislative efforts to restrict legal abortion access in

⁶⁰ 18 PA. CONS. STAT. § 3204(c) (2022).

⁶¹ Suchitra Dalvie, *A Wolf in Sheep’s Clothing*, CATHS. FOR CHOICE: CONSCIENCE MAG. (Aug. 31, 2018), <https://www.catholicsforchoice.org/resource-library/a-wolf-in-sheeps-clothing>; see also Shivana Jorawar, *In South Dakota, the Wolf Has Lost Its Clothes*, ACLU: NEWS & COMMENT. (Feb. 28, 2014), <https://www.aclu.org/news/reproductive-freedom/south-dakota-wolf-has-lost-its-clothes>.

⁶² Sital Kalantry, *Sex Selection in the United States and India: A Contextualist Feminist Approach*, 18 UCLA J. INT’L L. & FOREIGN AFFS. 61, 72–73 (2013) (quoting *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011: Hearing on H.R. 3541 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 112th Cong. 7 (2011)).

⁶³ Kalantry, *supra* note 36, at 142.

PA. In 2021, current PA Senator Martin introduced S.B. 21.⁶⁴ The bill reiterates the sex-selective abortion ban in PA and tacks on an additional disability-selective abortion ban specific to Down syndrome.⁶⁵ Thus, in such states where abortion is still legal, these existing SSABs only perpetuate harmful and untrue stereotypes concerning AAPI women.⁶⁶

II. THE DARK REALITY OF SEX-SELECTIVE ABORTION BANS AND THE THREATS TO ASIAN AMERICAN PACIFIC ISLANDER WOMEN

To understand the impact of SSABs on AAPI communities, it is worth noting the background and unique impact of the *Dobbs* decision on AAPI women. First, the general assumption that AAPI defaults to East Asian women must be dispelled. The term AAPI encompasses multiple ethnicities and thus multiple cultures.⁶⁷ By understanding the breadth of this diversity, harmful stereotypes, such as the model minority myth,⁶⁸ can slowly be unraveled and combatted against to recognize the difference in healthcare experience this large collection of women may undergo. Thus, it is not unexpected that access to abortion is one area of healthcare that can lead to divisions among AAPI women due to various barriers that hinder access (e.g., language barriers, lack of insurance coverage, and cultural stigma). As a result of *Dobbs*, these barriers faced by AAPI women have worsened.

A. *Statistics of Asian American Pacific Islander Women Showcasing the Breadth of Impact*

According to an analysis from the National Partnership for Women & Families, over a quarter of all AAPI women aged fifteen to forty-nine live in the states

⁶⁴ *Abortion Access in PA*, PA. H. DEMOCRATS, <https://www.pahouse.com/abortionaccess> (last visited Feb. 6, 2024) (choose “Has legislation been introduced to ban or restrict abortion in Pennsylvania?”).

⁶⁵ *Id.*

⁶⁶ CITRO ET AL., *supra* note 40, at 28.

⁶⁷ Robbins, *supra* note 22.

⁶⁸ Viet Thanh Nguyen, *Asian Americans Are Still Caught in the Trap of the ‘Model Minority’ Stereotype. And It Creates Inequality for All*, TIME (June 26, 2020, 6:55 PM), <https://time.com/5859206/anti-asian-racism-america>. The model minority myth is the cultural expectation and stereotype that Asian Americans are the model group for “outgroups” and other minorities because Asian Americans will always be: smart, successful, self-reliant, submissive and obedient, never in need to assistance. Sarah-Soonling Blackburn, *What Is the Model Minority Myth?*, LEARNING FOR JUST. (Mar. 21, 2019), <https://www.learningforjustice.org/magazine/what-is-the-model-minority-myth>.

(approximately twenty-six) that have banned or are working to ban abortion.⁶⁹ The main subpopulations that are impacted by the *Dobbs* ruling are Bhutanese, Indian, Laotian, Nepalese, Burmese, Pakistani, Thai, and Vietnamese women.⁷⁰ Therefore, because of the wide breadth of AAPI women, the action of one state can have large downstream effects on the whole community. For instance, Texas (where abortion has been banned) is home to approximately 400,000 AAPI women of reproductive age.⁷¹ The influence of *Dobbs* clearly places an additional stressor on these women, many of whom suffer from wage gap differences that decrease their economic resources and restrict them from obtaining an abortion.⁷² While the wage gap difference compared to White, non-Hispanic men may not be as shocking as other ethnic minority women (\$0.85 for every dollar paid to White men), this statistic does not capture the even larger economic disparity that AAPI women face.⁷³ The model minority assumption that AAPI women work white-collar jobs is largely false, as a larger portion of the service industry and healthcare essential workers are comprised of these women.⁷⁴ These jobs further the stressors that AAPI women face when accessing their healthcare autonomy (especially abortion). Many of them are unable to receive paid time off, not to mention paid leave (including maternity leave).⁷⁵ By understanding how different the wage gap is among AAPI women themselves, with a small subset of AAPI women being high earners offsetting the larger population of low earners, the challenge for these communities in obtaining necessary resources is further obscured. Thus, a lot of these women have lost their voice and ability to stand

⁶⁹ Robbins, *supra* note 22 (elaborating on the age range of reproductive age).

⁷⁰ *Id.* (explaining that approximately one-third of these groups live in the states that have banned or are working to ban abortion).

⁷¹ *Id.* About one-third of all Taiwanese, Indiana, Cambodian, and multiethnic Asian American women living in the twenty-six states that have banned or are likely to ban abortion reside in Texas. *Id.* Texas is also home to more than 40% of all Vietnamese women, and almost half of all Pakistani women residing in these twenty-six states. *Id.*

⁷² *Id.*

⁷³ Courtney Connley, *AAPI Women Have the Smallest Pay Gap—but that Stat ‘Masks’ Big Economic Disparities, Say Experts*, CNBC: CLOSING THE GAP (May 20, 2021, 9:00 AM), <https://www.cnbc.com/2021/05/20/aapi-women-have-the-smallest-pay-gapbut-that-doesnt-tell-the-full-story.html>.

⁷⁴ *Id.*

⁷⁵ *Id.*

out and advocate for their own healthcare rights. Therefore, when addressing SSABs, these impacts that AAPI women face are worsened by these bans.⁷⁶

*B. Threats Unique to Asian American Pacific Islander Women
When Seeking Abortion Access*

Asian Americans are the fastest-growing racial and ethnic group nationally, increasing by 35.6% from 2010 to 2020.⁷⁷ Thus, there is a large breadth of impact in these “gray area” states on AAPI women. North Dakota is ranked the first state with the highest increase in Asians, at a 103.1% change.⁷⁸ Abortions are barely legal in the state; as the state’s near-total ban to prohibit abortion completely has taken full effect.⁷⁹ North Carolina is ranked the fifth state with the highest increase in Asians, at a 68.4% change.⁸⁰ A judge has since lifted the permanent injunction on the state’s twenty-week gestational ban.⁸¹ While the current governor is supportive of abortion rights, there are plenty of medically unnecessary restrictions (including the selective abortion ban) that create further barriers to accessing abortion care.⁸² It is also likely that North Carolina legislators will push to prohibit abortion.⁸³ Arizona is ranked the twenty-first state with the highest increase in Asians, at a 52.1% change, which is still significant even when compared to North Dakota and North Carolina.⁸⁴ While the pre-*Roe* complete abortion ban is temporarily enjoined and the state has agreed to currently not enforce the ban, Arizona still has stringent regulations against legal abortion in the state. In September 2022, the fifteen-week ban went into effect.⁸⁵

⁷⁶ Dalvie, *supra* note 61.

⁷⁷ William H. Frey, *Mapping America’s Diversity with the 2020 Census*, BROOKINGS (Sept. 21, 2021), <https://www.brookings.edu/research/mapping-americas-diversity-with-the-2020-census/>. It is important to note that this growth rate is only for Asian American residents and does not include Native Hawaiians and other Pacific Islanders.

⁷⁸ *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, *supra* note 25.

⁷⁹ *After Roe Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/abortion-laws-by-state> (last visited Feb. 8, 2024).

⁸⁰ *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, *supra* note 25.

⁸¹ *After Roe Fell: Abortion Laws by State*, *supra* note 79.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, *supra* note 25.

⁸⁵ *After Roe Fell: Abortion Laws by State*, *supra* note 79.

Lastly, PA is ranked twenty-fourth, with a 50% increase in Asians.⁸⁶ Access to abortion depends on the ideology of the governor.⁸⁷ However, similar to North Carolina, multiple medically unnecessary restrictions (including the sex-selective abortion ban) only create more difficulties for women, especially AAPI women, to access abortion care.

As noted through legislators' comments on SSAB legislation, these bans are often rooted in cultural, racist, and xenophobic stereotypes and misunderstandings about AAPI ethnic groups and their "supposed" preference for male offspring. The racially-charged language that legislators have used when proposing SSABs is extremely offensive. For instance, South Dakota State Representative Stace Nelson voiced his support for SSABs by stating, "[m]any of you know I spent 18 years in Asia, . . . [a]nd sadly I can tell you that the rest of the world does not value the lives of women as much as I value the lives of my daughters."⁸⁸ The fact that one "experience" somehow becomes evidence-based support for a ban affecting thousands of women is unfathomable. Yet these harmful comments hide behind the veil of pushing against gender discrimination and promoting "equality." For example, in the House Report on the Prenatal Nondiscrimination Act of 2012,⁸⁹ U.S. Representative Lamar Smith stated, "[t]he reason for opposing sex-selection is uniform: the desire to combat discrimination."⁹⁰ The same politicians who support these bans in the U.S. Congress and state legislatures are the same ones at the forefront of the effort to criminalize abortion everywhere. Thus, it becomes evident that the main aim behind SSABs in the United States has always been to restrict abortion access in general, which is a step not too far from *Dobbs*, where abortion rights are no longer protected. These bans not only target AAPI women and their physical well-being in states that still recognize abortion access legally but impact their emotional well-being. The existence of SSABs perpetuates harmful gender stereotypes not only to AAPI populations, but also to all women. The notion that a woman's worth is based on her ability to bear male children is reinforced.

⁸⁶ *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, *supra* note 25.

⁸⁷ *After Roe Fell: Abortion Laws by State*, *supra* note 79.

⁸⁸ Redden, *supra* note 37.

⁸⁹ H.R. 3541, 112th Cong. (2012). This federal bill would have banned sex-selective abortion throughout the United States. *Id.*

⁹⁰ H.R. REP. NO. 112-496, at 15 (2012).

AAPI women who live in “gray area” states with SSABs face several threats when attempting to obtain abortions.⁹¹ The women who seek abortions in these states may be subject to increased scrutiny and surveillance of their intent, which can compromise their privacy and confidentiality of personal, intimate reasons for why an abortion is their choice.⁹² In addition to the harmful stereotypes perpetuated by the public, women in these “gray area” states already face difficult barriers to abortion healthcare access (e.g., language barriers, lack of cultural competency, and cultural stigma).⁹³ Many Asian American women, especially those who are immigrants, face language barriers when seeking abortion services.⁹⁴ This makes it increasingly difficult for them to understand their options and obtain necessary care.⁹⁵ A downstream effect is also the lack of cultural competency among healthcare providers when serving Asian American women.⁹⁶ This leads to more potential misunderstandings about their needs and desires, which puts AAPI women at an increased risk of burdened skepticism of pregnancy loss, as cultural stigma is highly prevalent in the community.⁹⁷ As a result, women may be made to feel ashamed and embarrassed to seek care. This can be noted from the story shared by Congresswoman Pramila Jayapal, the first South Asian woman elected to Congress. Jayapal had suffered an “extremely difficult first pregnancy,” and so when she found out she was pregnant again despite being on birth control, she faced a difficult decision.⁹⁸ Her doctor told her that there was a high likelihood of another dangerous, potentially life-threatening pregnancy.⁹⁹ Knowing that she could not endure that,

⁹¹ CITRO ET AL., *supra* note 40, at 1 (finding that “foreign-born Chinese, Indians and Koreans have proportionally *more* girls than White Americans”).

⁹² *See id.* at 28.

⁹³ Iyanrick John & Kathy Ko Chin, *A Review of Policies and Strategies to Improve Access to Health Care for Limited English Proficient Individuals in the Asian American, Native Hawaiian, and Pacific Islander Community*, 16 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 259, 264, 275 (2016).

⁹⁴ *See id.* at 261.

⁹⁵ *Id.* at 260.

⁹⁶ *See generally id.* at 275.

⁹⁷ *See generally* CITRO ET AL., *supra* note 40 (concluding that “laws banning sex-selective abortion have been enacted on the basis of misinformation and harmful stereotypes about Asian Americans”).

⁹⁸ Amar D. Gupta, *The Impact of a Post-Roe World on Asian American and Pacific Islander Women*, SILICONEER (June 7, 2022), <https://siliconeer.com/current/impact-of-post-roe-world-on-aapi-women>.

⁹⁹ *Id.*

Jayapal made the difficult decision to have an abortion.¹⁰⁰ However, as a recent immigrant to the United States, she was aware of the strong stigma within her community surrounding the procedure.¹⁰¹ The cultural stigma was so strong that she kept her decision a secret for a long time, even from her own mother, due to the shame attached to the abortion.¹⁰² It was not until the *Dobbs* opinion was leaked that Jayapal decided to speak up and fight against the relentless attacks on women's healthcare rights.¹⁰³

C. The Rise in AAPI Hate Crimes Since COVID-19 Exacerbates Poor Access to Abortion

The protection of the AAPI communities is more important now than ever. In the United States, the rise in anti-AAPI hate crimes since the COVID-19 pandemic has been significant and well-documented.¹⁰⁴ According to the Stop AAPI Hate National Report, a non-profit organization that tracks incidents of hate, harassment, and discrimination against AAPI persons in the United States, there were a total of 10,905 hate incidents between March 19, 2020 and December 31, 2021.¹⁰⁵ Of the hate incidents reflected in the report, 42.5% occurred in 2020 and 57.5% occurred in 2021.¹⁰⁶ Additionally, “[h]ate incidents reported by women ma[de] up 61.8% of all reports.”¹⁰⁷ This represents a significant increase compared to previous years, and the actual number of incidents is likely even higher as many victims may not report hate crimes to the authorities.¹⁰⁸ The increase in anti-AAPI hate is particularly alarming since the COVID-19 pandemic because it has heightened the additional dangers AAPI women face when seeking abortion care. First, the rise in hate crimes

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See generally AGGIE J. YELLOW HORSE, RUSSELL JEUNG, & RONAE MATRIANO, STOP AAPI HATE NATIONAL REPORT: 3/19/20–12/31/21 (2022), <https://stopaapihate.org/wp-content/uploads/2022/03/22-SAH-NationalReport-3.1.22-v9.pdf> (demonstrating that the rise has been notable since the COVID-19 pandemic).

¹⁰⁵ *Id.* at 1.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 2.

¹⁰⁸ As an Asian American female, I can also speak from personal experience of experiencing verbal harassment publicly, but not having the courage or energy to report the hate crime to authorities.

may make AAPI women feel more vulnerable and less likely to access health care services (especially abortion clinics) when so much cultural stigma already discourages such acts.¹⁰⁹ Second, the increased racial tensions and xenophobia may also make it more difficult for AAPI women to find providers who are willing to perform abortions, due to the fear of backlash or discrimination.¹¹⁰ This leaves increased hostility towards these women and results in a lack of access to safe and affordable abortion services, even if abortion is legal in that woman's state.

D. Encouragement of Racial Profiling by Providers Through Sex-Selective Abortion Bans

To further elaborate on the lack of willingness issue for providers to perform abortions for AAPI women after heightened COVID-19 racial tensions, this same problem is exacerbated by SSABs in "gray area" states. The SSABs encourage racial profiling of AAPIs by healthcare providers. By stigmatizing specific reasons for seeking an abortion, SSABs put pressure on healthcare providers to racially profile and scrutinize the motivations of their patients.¹¹¹ This means that providers are forced to inquire into the reason for the patient's decision to seek abortion care, even though people have a variety of complex reasons for ending their pregnancies.¹¹² This type of forced inquiry encourages racial profiling of AAPI patients and interferes with the trust between provider and patient, which is vital for a healthy provider-patient relationship. Faced with the threat of severe punishment from some SSABs, providers may adopt an aggressive interpretation of the statutes.¹¹³ They may take into account the false, state-sanctioned, racist stereotypes that AAPI women are more likely to engage in sex-selective abortions. This only adds another barrier for AAPI women trying to access abortion care and further undermines the provider-patient relationship.

¹⁰⁹ See Sruthi Chandrasekaran & Sung Yeon Choinmorrow, *Asian American and Pacific Islander Access to Abortion During COVID-19: A Complex Interplay of Factors*, 6 HEALTH EQUITY 625 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9448515/pdf/hea.2022.0036.pdf>.

¹¹⁰ See Abortion Bans, *supra* note 1, at 115.

¹¹¹ *Id.* at 111.

¹¹² *Id.* at 118.

¹¹³ See, e.g., TENN. CODE ANN. §§ 39-15-217(b), 40-35-111(b)(3) (2023) (providing that any provider who violates the SSAB faces harsh criminal sanctions, including being charged with a Class C felony punishable by up to fifteen years' imprisonment and/or a fine of up to \$10,000).

E. Criminal Consequences of Sex-Selective Abortion Bans Explained

As a result of *Dobbs* overturning *Roe*, pregnant AAPI women who obtain abortions in states with SSABs may be subject to criminal penalties and other legal consequences, which can have far-reaching impacts on their lives and well-being. In the past decade, two AAPI women in Indiana faced prosecution for murder due to pregnancy losses.¹¹⁴ They were charged under a 1979 fetal homicide law designed to protect pregnant individuals from third-party violence.¹¹⁵ In 2010, a pregnant Chinese immigrant, Bei Bei Shuai, consumed rat poison in a suicide attempt while suffering from major depression.¹¹⁶ She was taken to a hospital, where doctors performed a caesarian section and delivered her baby.¹¹⁷ However, her baby passed away a few days later.¹¹⁸ Ms. Shuai was extremely saddened by this outcome, and it was even noted that she held her baby for hours before the death, “begg[ing] for her own life to be taken so that her child’s might be spared.”¹¹⁹ Ms. Shuai was charged with murder and attempted feticide, even though the baby died from natural causes, and spent over a year in jail before pleading to lesser charges.¹²⁰ In the same state, Purvi Patel, an Indian American woman, was the first person in the United States convicted of charges related to allegedly ending her own pregnancy.¹²¹ In 2013, she sought emergency care for vaginal bleeding after a pregnancy loss and told the hospital the fetus was stillborn.¹²² However, after the police found text messages

¹¹⁴ See, e.g., Ed Pilkington, *Indiana Prosecuting Chinese Woman for Suicide Attempt that Killed Her Foetus*, GUARDIAN (May 30, 2012, 1:36 PM), <https://www.theguardian.com/world/2012/may/30/indiana-prosecuting-chinese-woman-suicide-foetus>; see also Sarah Kaplan, *Indiana Woman Jailed for “Feticide.” It’s Never Happened Before.*, WASH. POST (Apr. 1, 2015, 5:01 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2015/04/01/indiana-woman-jailed-for-feticide-its-never-happened-before>.

¹¹⁵ Pilkington, *supra* note 114; Kaplan, *supra* note 114.

¹¹⁶ Pilkington, *supra* note 114.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*; Miriam Yeung, *How Asian American Women Became the Target of Anti-Abortion Activism*, WASH. POST (Nov. 4, 2015, 9:04 PM), <https://www.washingtonpost.com/posteverything/wp/2015/11/04/how-asian-american-women-became-the-target-of-anti-abortion-activism>.

¹²¹ Kaplan, *supra* note 114.

¹²² *Id.*; Emily Bazelon, *Purvi Patel Could Be Just the Beginning*, N.Y. TIMES (Apr. 1, 2015), <https://www.nytimes.com/2015/04/01/magazine/purvi-patel-could-be-just-the-beginning.html>.

indicating she had ordered abortion-inducing pills, she was charged with feticide and sentenced to twenty years in prison.¹²³ Even though there was no evidence of abortion-related medication in her system, law enforcement still arrested her and assumed she must have self-medicated to lose her fetus.¹²⁴ While Ms. Patels' feticide case was later overturned on appeal, the charges of both women really offer a startling insight into how easily the justice system can racially profile and criminalize pregnant women of color. Many news outlets also noted that it was "no coincidence" that both women prosecuted under Indiana's feticide law were Asian.¹²⁵

It is also important to note that these two cases stand in stark contrast to the case of Alicia Keir, a White woman in Indiana who was just sentenced to one day in prison after pleading guilty to involuntary manslaughter in the death of her newborn daughter.¹²⁶ This discrepancy highlights how AAPI women's reproductive autonomy is policed and how the overreach in applying feticide laws to suspected self-aborted pregnancies leads to disproportionately harsher treatment of women of color, especially AAPI women, compared to White women. Thus, AAPI women who experience a stillbirth or miscarriage, even due to non-abortion-related causes, may face murder charges as a result of racial profiling in any state (and more so under states with SSABs enacted).

These examples call for the protection of abortion rights among AAPI women, even in states where abortion is still legal. The notion that SSABs are discouraging gender discrimination is ironic and false. SSABs are only further perpetuating what they purportedly fight against: harmful gender stereotypes of all women, and, more specifically, cultural stereotypes of AAPI women.

¹²³ Bazelon, *supra* note 122.

¹²⁴ See Kaplan, *supra* note 114.

¹²⁵ See, e.g., Miriam Yeung, *How Asian American Women Became the Target of Anti-Abortion Activism*, WASH. POST (Nov. 4, 2015, 9:04 PM), <https://www.washingtonpost.com/posteverything/wp/2015/11/04/how-asian-american-women-became-the-target-of-anti-abortion-activism/>; see also Nimra Chowdhry & Lisa K. Sangoi, *Asian-American Women Treated Unfairly for Ending Pregnancies*, INDYSTAR (June 5, 2016, 4:52 PM), <https://www.indystar.com/story/opinion/readers/2016/06/05/asian-american-women-treated-unfairly-ending-pregnancies/85454898>.

¹²⁶ *Woman Spared Incarceration for Newborn Daughter's Death on Caribbean Cruise*, CBS NEWS: CHI. (Oct. 23, 2015, 9:35 AM), <https://www.cbsnews.com/chicago/news/woman-spared-incarceration-for-newborn-daughters-death-on-caribbean-cruise>; Teresa Auch Schultz, *DeMotte Woman Avoids Jail in Newborn's Cruiseship Death*, CHI. TRIBUNE (Oct. 22, 2015, 3:08 PM), <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-demotte-infant-death-sentence-st-1023-20151022-story.html>; Chowdhry & Sangoi, *supra* note 125 (noting that Ms. Keir's courtroom was only less than seventy miles from where Ms. Patel was unjustly convicted).

III. CRITIQUE OF SEX-SELECTIVE ABORTION BANS

The topic of sex selection has divided those who are pro-choice in the United States. This argument is contentious because the issue of gender equality is presented on both sides.¹²⁷ Some believe that SSABs should be allowed as they combat the cultural preferences of some who value male children over females. Yet, there is little evidence of this occurring in the United States. Conversely, opponents of SSABs argue that the restrictions on sex-selective abortion limit women's control over their own bodies. This dilemma faced by women who normally value their autonomy rights is contributing to the ineffectiveness of SSABs and hinders the implementation of more effective solutions to address the issue.¹²⁸

A. *Ineffectiveness of Sex-Selective Abortion Bans*

The bans on sex-selective abortions are ineffective and fail to address the true problem: problematic societal attitudes that devalue females and cultural pressures that may push individuals to pursue sex selection. First, the bans are difficult to enforce. Providers may not always be able to determine the reason why a woman is seeking an abortion, and thus, they may err on the side of caution and choose to not provide abortion access.¹²⁹ Additionally, there are no other "solutions" in place to prevent sex selection through more efficient means. SSABs restrict sex selection through abortion; however, other, more prevalent methods of sex selection are not addressed. For example, families can use artificial insemination to only fertilize eggs with sperm that will produce the desired sex.¹³⁰ Additionally, families can use in-vitro fertilization to determine the sex of the embryo before implantation, by removing eggs from the woman, fertilizing them outside the body, and analyzing the chromosomes of the removed cells to choose only embryos of the desired sex.¹³¹ These methods of sex selection are not only legally available in the United States but are also actively promoted by fertility clinics.¹³² Despite this, none of these laws that ban sex-selective abortion in the United States address sex selection before

¹²⁷ Kalantry, *supra* note 62, at 64.

¹²⁸ *Id.*

¹²⁹ CITRO ET AL., *supra* note 40, at 27–28.

¹³⁰ Kalantry, *supra* note 36, at 142.

¹³¹ *Id.*

¹³² *Id.*

conception or implantation.¹³³ Even worse, the bans contribute to the undermining of women's reproductive autonomy by criminalizing access to safe abortions for the attending physician.

B. Encouragement of Racial Profiling by Providers

The most detrimental impact of these bans is the perpetuation of racist and xenophobic stereotypes of AAPI women and the encouragement of racial profiling by physicians. These bans, including Pennsylvania's, contain penalties for healthcare providers.¹³⁴ Providers are pushed to be hypervigilant in scrutinizing a patient's intent behind seeking an abortion (which is often a very complex decision made up of a multitude of reasons). Thus, this pressures providers into restricting their practices to avoid potential criminal prosecution, while simultaneously placing women at risk of obtaining unsafe abortions.¹³⁵

C. Specific Consequences of Pennsylvania's Sex-Selective Abortion Ban

Currently, there are no direct consequences for women who violate Pennsylvania's SSAB. The ban is directed towards providers, and women are not directly penalized for seeking or undergoing an abortion based on the gender of the fetus.¹³⁶ The legal consequences of violating PA's SSAB include criminal penalties for the provider: if a provider is found to have performed an abortion based solely on the gender of the fetus, they can be charged with a third-degree felony and face up to seven years in prison and a fine of up to \$15,000.¹³⁷ Thus, these consequences for providers can have chilling effects on access to abortion care that is supposedly legal and accessible in PA.

Moreover, the ban may still have indirect consequences for women in PA. For example, the ban can limit access to abortion services and may deter providers from offering these services, even in cases where they are needed for the health and well-being of the patient. Additionally, as noted above, these bans really place additional negative health stressors that have a discriminatory impact specifically on pregnant AAPI women.

¹³³ *Id.*

¹³⁴ 18 PA. CONS. STAT. ANN. § 3204(a)(2), (d) (2022).

¹³⁵ *Abortion Bans*, *supra* note 1.

¹³⁶ *Id.* §§ 3204, 3218(a).

¹³⁷ *See id.* §§ 3204, 1101.

Also, bans on sex-selective abortions in states where abortion is legal still undermine women's autonomy and shift the focus to less effective solutions. PA's implementation of SSABs demonstrates a focus on ineffective solutions to sex discrimination, which only draws attention away from measures that would truly remedy discriminatory policies against women and girls far more effectively. The harder and more effective policy solution would hold society accountable for the pervasive expressions and education of gender preferences in stereotypes. Defaulting to simply criminalizing sex-selective abortion places the burden of this much larger societal problem on women and abortion providers—at a high cost to women's health and dignity.

IV. ANALYZING THE CONSTITUTIONALITY OF PENNSYLVANIA'S SEX-SELECTIVE BAN

Before *Dobbs*, for decades, the Supreme Court recognized a fundamental right to decisional autonomy in personal and family relationships free from undue governmental interference.¹³⁸ Before fetal viability, a woman had the fundamental right to choose abortion even if it was not necessary to preserve her life/health.¹³⁹ Even if a state attempted to further a valid interest, any law that imposed an undue burden would be deemed unconstitutional.¹⁴⁰ States were only allowed to ban abortion after viability (with exceptions to save the life of the mother).¹⁴¹ However, since *Dobbs* revoked the substantive due process right to abortion access granted in *Roe*, the legal analysis of SSABs, specifically Pennsylvania's, has changed because a substantive due process right to abortion access no longer exists.¹⁴²

Without the protection provided by *Roe* and *Casey*, PA has the latitude to regulate abortion, and any "undue burden" to abortion access can exist. However, even though federal protections for abortion access are now void, there are still other restrictions that apply that call into question the constitutionality of PA's SSAB (where abortion is still legal). There are constitutional arguments under federal

¹³⁸ See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 876 (1992) (modifying the right to privacy in a women's decision in abortion in *Roe*).

¹³⁹ See *id.* at 871.

¹⁴⁰ See *id.* at 876.

¹⁴¹ See *id.* at 879–80.

¹⁴² See *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022). The analysis of the constitutionality of SSABs will focus on PA's, as it is one of the few states that falls into the "gray area." Additionally, I have personal interest in this state since I currently live here.

restrictions imposed by the Equal Protection Clause of the Fourteenth Amendment and then PA state restrictions imposed by the PA Equal Rights Amendment and PA anti-discrimination statute.

A. *Analysis Under the Fourteenth Amendment of the United States Constitution*

The PA SSAB violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.¹⁴³ The Equal Protection Clause (EPC), found in Section 1 of the Fourteenth Amendment, provides, in pertinent part, that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”¹⁴⁴ An analysis of racial discrimination violations under the EPC could be conducted. Yet, this analysis is unlikely to succeed.

A court could consider whether the PA SSAB imposes a classification based on gender (since the distinction between pregnancy is female or male sex organs). The Supreme Court has designated gender as a quasi-suspect class where intermediate scrutiny is the appropriate level of heightened scrutiny.¹⁴⁵ Thus, this means PA would need to show that the classification is substantially related to the important government purpose.¹⁴⁶ A court would first identify whether there is an important government purpose for the law and then if the law is substantially related to that important government purpose.¹⁴⁷ The main concern with this constitutionality argument is that it is likely to fail when identifying the important government purpose. Courts tend to uphold laws based on biological “real differences.”¹⁴⁸ Thus, chances are, as long as PA can argue that part of the reason for discrimination is based on biological differences related to pregnancy, then its SSABs would likely not be found to violate the EPC under gender discrimination. PA would likely be able to meet this requirement, especially since the Court has held previously that pregnancy-related differences are normally constitutional. In *Geduldig v. Aiello*, a California disability insurance program excluded pregnancy-

¹⁴³ See *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) (stating that “discrimination may be so unjustifiable as to be violative of due process”); see also *United States v. Carolene Products Co.*, 304 U.S. 144, 153–54 (1938).

¹⁴⁴ U.S. CONST. amend. XIV, § 1.

¹⁴⁵ R. Kendall Kelso, *The Structure of Intermediate Review*, 25 LEWIS & CLARK L. REV. 691, 699 (2021).

¹⁴⁶ See *id.* at 730.

¹⁴⁷ *Id.*

¹⁴⁸ See *Michael M. v. Superior Ct. of Sonoma Cnty.*, 601 P.2d 572 (Cal. 1979), *aff'd*, 450 U.S. 464 (1981).

related disabilities from coverage.¹⁴⁹ The Court held that the insurance plan was not a sex-based classification but just a distinction between pregnant and nonpregnant people.¹⁵⁰ Similarly, in *Michael M. v. Superior Court*, the court upheld a statutory rape law punishing only males for having sex with an underage female.¹⁵¹ Again, the court upheld the law as based on the “real difference” that only females can get pregnant and experience the harms of unwanted pregnancy.¹⁵² Thus, the topic of pregnancy-related issues becomes a double-edged sword in Equal Protection cases since it can favor laws advantaging women. However, it also perpetuates gender discrimination based on a woman’s ability to get pregnant.

Alternatively, it could be argued that the PA SSAB has a disproportionate impact on women of color, specifically AAPI women, and that the ban was enacted with discriminatory intent. The Court has designated race as a known suspect class where the highest level of scrutiny by courts, strict scrutiny, is applied.¹⁵³ This means the court would first identify whether there is a compelling government purpose for the law.¹⁵⁴ Then, the court must decide if the law’s classification is necessary to achieve the compelling government purpose.¹⁵⁵ In other words, the law in question must be narrowly tailored to further compelling, legitimate government interests. As noted above, there are many other “simpler” ways legislators could have chosen to prevent sex-selective births (e.g., preventing artificial insemination matters). Also, while legislators may propose that their “compelling” government purpose is to prevent sex-selection and gender discrimination, there has been little to no evidence provided which supports this proposition. If anything, current evidence provides contradictory evidence to what legislators have purported and shows no protections result from these bans.¹⁵⁶ However, again, this EPC violation analysis runs into some

¹⁴⁹ *Geduldig v. Aiello*, 417 U.S. 484, 485 (1974).

¹⁵⁰ *Id.* at 497 n.20 (finding that pregnancy is not a sex-based classification even though a woman’s sex is the only reason she can get pregnant).

¹⁵¹ *Michael M.*, 601 P.2d at 574.

¹⁵² *Id.*

¹⁵³ See *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) (holding that “race must be scrutinized with particular care”); see also *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938) (introducing the concept that “prejudice against discrete and insular minorities . . . may call for a correspondingly more searching judicial inquiry”).

¹⁵⁴ *Kelso*, *supra* note 145, at 697.

¹⁵⁵ *Id.*

¹⁵⁶ *CITRO ET AL.*, *supra* note 40, at 27–28.

issues. Because PA's SSAB does not explicitly call or point out AAPI women as the targets, the ban would likely fall under the category of facially neutral laws.¹⁵⁷ As noted in *Washington v. Davis* and *Feeney*, the Court determined that facially neutral laws cannot receive heightened scrutiny (and receive only rational basis review)¹⁵⁸ unless a discriminatory purpose can be shown with no other explaining reasons, even if there is knowledge of discriminatory impact. As noted in *Feeney*, courts will refuse to infer discriminatory purpose unless the decision was made because of, not in spite of, the effect.¹⁵⁹ However, there is some hope for this argument as the unequal application of the law can trigger a court to apply intermediate scrutiny.¹⁶⁰

It can be argued that SSABs have been implemented for their discriminatory purpose against AAPI women. The evidence of this discriminatory purpose could include the historical context in which the PA SSAB was enacted in looking at the growth of AAPI populations. There is evidence pointing to other state legislators of how SSABs all around the country have made statements indicating a discriminatory purpose against AAPI women.¹⁶¹ However, because the PA SSAB was enacted a long time before the influx of other SSAB bans and before many instances of explicit discriminatory commentary, it may be hard to make a successful argument that points to legislative history based on stereotypes and discriminatory race-based comments in PA. However, this argument could be successful in other states that have had state legislators make such comments publicly, like South Dakota, as noted earlier. It is possible that if there is evidence gathered showing clear discrimination and unequal application of the PA SSAB against AAPI by providers, then an EPC violation under a race classification could be successful. This would be similar to what the Court held in *Yick Wo v. Hopkins*. In *Yick Wo*, a city's race-neutral ordinance required a

¹⁵⁷ See 18 PA. CONS. STAT. § 3204 (2022).

¹⁵⁸ See *Washington v. Davis*, 426 U.S. 229, 242 (1976); see also *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979). A law will meet rational basis review if it is rationally related to a legitimate government purpose. See *Geduldig v. Aiello*, 417 U.S. 484, 494–96 (1974) (holding that so long as the decision by the State is rationally supportable to a legitimate government interest, the courts may not impose their judgment on appropriateness of that decision). The Court is extremely deferential to the government when applying the rational basis test. Katie R. Eyer, *Protected Class Rational Basis Review*, 95 N.C. L. REV. 975, 981–82 (2017). A court will find a law should be upheld if it is possible to conceive of any legitimate purpose, even if that was not the government's actual purpose. See *id.*

¹⁵⁹ See *Feeney*, 442 U.S. at 279 (determining if a law that purposefully provides a hiring preference for veterans simultaneously purposely imposes a burden on females).

¹⁶⁰ See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886).

¹⁶¹ CITRO ET AL., *supra* note 40, at 1.

permit for the operation of laundromats in wooden buildings.¹⁶² However, the records showed that all Chinese applicants were denied permits, while others were granted.¹⁶³ The Court held that the ordinance was unconstitutional and an EPC violation.¹⁶⁴ It stated that facially neutral regulations with unequal administration or selective application with unequal hands violated the EPC “whatever may have been the intent of the ordinances as adopted.”¹⁶⁵ Yet, the main concern with the success of this argument would be that currently, there is likely a lack of data showing this “unequal hand[ed]” administration.¹⁶⁶ Therefore, huge efforts would need to be placed on analyzing patient access to abortions to seek a clear indication from the data that providers consistently restrict abortion access from AAPI significantly more than other women in PA.

B. Analysis Under Pennsylvania’s Equal Rights Amendment

A stronger argument against the constitutionality of PA’s SSAB would be to examine the state laws. This is because there is no explicit provision in the state constitution of PA that grants women the legal right to abortion.¹⁶⁷ However, PA’s SSAB violates the PA Equal Rights Amendment (ERA) by limiting a woman’s ability to make decisions about her own reproductive health and by reinforcing harmful gender and racial stereotypes against women.

Pennsylvania’s ERA prohibits discrimination on the basis of sex and has stricter protections than the Federal Constitution.¹⁶⁸ The ERA was adopted in 1971 and reads: “Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.”¹⁶⁹ The ERA was added to the PA Constitution to:

¹⁶² *Id.* at 357.

¹⁶³ *Id.* at 374.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 373.

¹⁶⁶ *Id.* at 373–74.

¹⁶⁷ Abortion access in PA is still legal because of a supportive governor. *See* Press Release, Governor Josh Shapiro, Shapiro Admin. Launches Abortion Access Website After Texas Ruling, Reminds Pennsylvanians Medication Abortion Remains Legal in the Commonwealth (Apr. 10, 2023), <https://www.governor.pa.gov/newsroom>.

¹⁶⁸ PA. CONST. art. I, § 28.

¹⁶⁹ *Id.*

[I]nsure equality of rights under the law and to eliminate sex as a basis for distinction. The sex of citizens of this Commonwealth is no longer a permissible factor in the determination of their legal rights and legal responsibilities. The law will not impose different benefits or different burdens upon the members of a society based on the fact that they may be man or woman.¹⁷⁰

Additionally, the PA Supreme Court has stated that it will not hesitate to “effectuate the Equal Rights Amendment’s prohibition of sex discrimination by striking down statutes and common law doctrines predicated upon traditional or stereotypical roles of men and women.”¹⁷¹ A strong exemplar case to a PA ERA analysis is *Cerra v. East Stroudsburg Area School District*, where the PA Supreme Court held that a regulation that required women over five months pregnant to resign violated the PA Human Relations Act, which forbids sex employment discrimination.¹⁷² While the Court did not dive into an equal protection and ERA analysis, the Court did forcefully state that pregnancy discrimination was the same as “sex discrimination pure and simple.”¹⁷³ Thus, under this framework, one could easily argue that SSABs are PA ERA violations because abortions are only relevant to pregnant persons, which applies only to women.

However, this analysis is not simple because the case of *Fischer v. Department of Public Welfare* drew a line in the breadth of ERA analysis in PA law. Even if a PA statute contained a sex-based distinction, *Fischer* created an exception for ERA violations if the distinction was rooted in unique physical characteristics.¹⁷⁴ In *Fischer*, a group of pregnant women seeking abortions, joined by clergy members, health clinics, and a rape counseling center, sued the Department of Public Welfare, the Secretary of Public Welfare, and the Deputy Secretary of Medical Assistance, alleging that the “coverage ban” provision in the Abortion Control Act was unconstitutional.¹⁷⁵ The PA Abortion Control Act of 1982 required that a woman seeking an abortion be provided with certain information (e.g., risk and alternatives to abortion) at least twenty-four hours before the procedure and required the woman to provide a signed statement indicating that she notified her husband (i.e., placed

¹⁷⁰ *Henderson v. Henderson*, 327 A.2d 60, 62 (Pa. 1974).

¹⁷¹ *Weaver v. Harpster*, 975 A.2d 555, 571 (Pa. 2009).

¹⁷² *Cerra v. E. Stroudsburg Area Sch. Dist.*, 299 A.2d 277, 280 (Pa. 1973).

¹⁷³ *Id.*

¹⁷⁴ *Fischer v. Dep’t of Pub. Welfare*, 502 A.2d 114, 125 (Pa. 1985).

¹⁷⁵ *Id.* at 116 n.2, 117–18.

certain restrictions on the availability of abortion).¹⁷⁶ The challenged “coverage” provision prohibited the use of public funds, specifically state Medicaid funds, to pay for abortions that were not necessary to save the life of the mother.¹⁷⁷ The plaintiffs argued that a law distinguishing pregnant women who choose to give birth from pregnant women who choose abortions violates the ERA because while men have all of their medically necessary services covered, women seeking a medically necessary abortion are not offered the same luxury.¹⁷⁸ However, the PA Supreme Court did not agree. The Court stated that the coverage ban did not use sex as a distinction.¹⁷⁹ Instead, the distinction was centered around abortion, and “the statute does not accord varying benefits to men and women because of their sex, but accords varying benefits to *one class of women*, as distinct from another, based on a voluntary choice made by the women.”¹⁸⁰ Thus, similar to *Michael M.*, the PA Court turned to relying on unique physical characteristics.¹⁸¹ It stated that because only women get pregnant, only pregnant women choose abortions, and therefore no ERA violation was found.¹⁸² The Court said the ERA “does not prohibit differential treatment among the sexes when, as here[,], that treatment is reasonably and genuinely based on physical characteristics unique to one sex.”¹⁸³

Because PA’s SSAB similarly deals with abortion access and how the right is perceived by the PA ERA, an analysis of *Fischer* and how it applies to SSABs would help explain the success of an unconstitutionality argument. Similar to the coverage ban in *Fischer*, SSABs require assessment under the ERA. SSABs only affect females, as they are the only ones who can become pregnant and seek abortions. The notion that an abortion-related ban is not a sex-based classification originated from *Fischer*, which stated that these bans do not discriminate against women as only

¹⁷⁶ 18 PA. CONS. STAT. §§ 3205(a)(1), 3209(a) (2022).

¹⁷⁷ *Fischer*, 502 A.2d at 117.

¹⁷⁸ *Id.* at 124.

¹⁷⁹ *Id.* at 125.

¹⁸⁰ *Id.* (emphasis added).

¹⁸¹ *Id.*

¹⁸² *Id.* at 126.

¹⁸³ *Id.* at 125 (quoting *People v. Salinas*, 551 P.2d 703, 706 (1976)). The Court cited to four state cases to support this holding: *People v. Salinas*, *State v. Rivera*, *City of Seattle v. Buchanan*, and *Holdman v. Olim*. *Id.*

women can get abortions.¹⁸⁴ Ultimately, when a legislative classification is based on physical traits unique to one sex, it is exempt from a PA constitutional challenge.¹⁸⁵

Yet, *Fischer's* exemption for unique physical characteristics undermines the equality principle guaranteed by the PA ERA. Physical characteristics based on sex are frequently a representation of sex itself. Throughout history, women's reproductive abilities have been used as a means to control and burden women's lives.¹⁸⁶ *Fischer's* acceptance of this exemption has no support in the text of the ERA or precedent. Additionally, as highlighted in the book *Life and Law in the Commonwealth*, the fact that only women can get pregnant does not address the scope of the ERA when dealing with laws that limit women's responses to pregnancy.¹⁸⁷ By establishing this exemption, *Fischer* has weakened the ERA in cases when women require its protection the most: when "real differences" between sexes are used to justify laws that burden women.

If an analysis is done without considering *Fischer*, it becomes clear that SSABs are a sex-based classification. Men can protect their health without worrying about governmental interference. SSABs impact a class of solely females, as they are the only ones who get abortions. All abortion-related bans in PA, including SSABs, specifically target women by punishing their reproductive healthcare choices and exposing only one gender to harm. SSABs take this discrimination one step further and disproportionately impact women of color even more drastically. As a result, SSABs burden AAPI women and should be noted as a sex-based classification in violation of the PA ERA.

At the end of 2022, the PA Supreme Court decided to hear a case, *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*,

¹⁸⁴ *Id.*

¹⁸⁵ *See id.*

¹⁸⁶ See Elizabeth Hira, *The Government Has a Long History of Controlling Women—One That Never Ended*, BRENNAN CTR. FOR JUST. (Nov. 9, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/government-has-long-history-controlling-women-one-never-ended>.

¹⁸⁷ Deborah L. Brake & Susan Frietsche, *Women on the Court and the Court on Women*, in *THE SUPREME COURT OF PENNSYLVANIA: LIFE AND LAW IN THE COMMONWEALTH* 158, 166 (John J. Hare ed., 2018). This book, edited by legal scholar John J. Hare is often cited as a comprehensive overview of the legal system in Pennsylvania, including the history of PA law, structure of the court system, and impact of law on everyday life in PA.

addressing whether Medicaid can be used to cover abortion services.¹⁸⁸ The case raised several issues, including whether abortion is considered a fundamental right in PA, and whether the coverage ban violates the PA ERA and Equal Protection guarantees.¹⁸⁹ The outcome of the case could have significant implications for whether SSABs in PA are considered constitutional or not. If the majority in the Court also decides that *Fischer* is inconsistent with the ERA, then it will likely be overturned, and the coverage ban in PA and SSABs would easily be found unconstitutional in the state.

Fischer's exemption goes against the goals of the ERA. Moreover, the control of a woman's reproductive abilities and exaggeration of biological differences has been and continues to be a crucial component in the oppression of women throughout history. If the Court were to decide to overrule *Fischer*, there may be policy progress toward healthcare equality. Among the many independently sufficient reasons why the Court should overrule *Fischer*, *Dobbs* has created a special justification for not upholding the principle of stare decisis and examination of *Fischer*. *Dobbs* was the first time the Supreme Court of the United States discarded a fundamental right. Women in PA have relied upon the fundamental right to abortion for decades. *Fischer* was decided under a framework where the right to an abortion was still recognized as a fundamental federal right. Thus, the presence of *Dobbs* gives the PA Supreme Court a lot to think about and reasons why a reassessment of rights in the state constitution needs to be addressed.

C. Pennsylvania's Anti-Discrimination Statute

In addition to the ERA violation, AAPI women could argue that the SSAB violates PA's anti-discrimination statute. The Pennsylvania Human Relations Act (PHRA) is the state's anti-discrimination statute.¹⁹⁰ The PA statute provides for more robust remedies than the Fourteenth Amendment because the Fourteenth Amendment does not provide any specific remedies for individuals who have suffered from discrimination.¹⁹¹ For instance, PA law allows individuals who have suffered from discrimination to recover compensatory damages, which are intended

¹⁸⁸ Allegheny Reproductive Health Center v. Pa. Department of Human Services (Medicaid Case), WOMEN'S L. PROJECT (Sept. 18, 2023), <https://www.womenslawproject.org/2023/09/18/allegheny-reproductive-health-center-v-pa-department-of-human-services-medicaid-case>.

¹⁸⁹ *Id.*

¹⁹⁰ 43 PA. STAT. AND CONS. STAT. § 952(a) (West 2022).

¹⁹¹ See *Brown Transportation Corp. v. Pennsylvania Hum. Rels. Comm'n*, 578 A.2d 555, 562 (Pa. 1990) (interpreting the PHRA to allow for compensatory or punitive damages).

to compensate them for the harm they have suffered.¹⁹² This can include compensation for lost wages, medical expenses, and emotional distress, among other things.¹⁹³ Individuals under PA law also can recover punitive damages awarded in addition to compensatory damages.¹⁹⁴ However, the PHRA's main focus applies to employment, housing, and public accommodations discrimination.¹⁹⁵ Therefore, while PHRA violation may be indirectly relevant to SSABs, it likely would not be a strong argument for challenging the constitutionality of SSABs. The strongest challenge would be with a PA ERA violation and the overturning of *Fischer*, or recognition of abortion as a fundamental right by the PA Supreme Court. These all lie upon how *Allegheny Reproductive Health* will play out in the coming months. The impacts can be vast, especially for protecting women's access, more specifically AAPI women's access to reproductive healthcare in PA.

CONCLUSION

The threat of SSABs, especially with the stripping of women's fundamental right to abortion access after *Dobbs*, is larger than ever. In states where abortion access is still legal, SSABs create more harm than good. PA is one of these states where the constitutionality of its SSAB needs to be re-examined. The perpetuation of harmful stereotypes of AAPI communities and cultural practices is placed under even more fire after the increase in anti-Asian sentiment post COVID-19. SSABs suggest that AAPI women are more likely to engage in gender-biased practices, despite there being no evidence that this is the case. There are no benefits and outcomes of SSABs relieving gender discrimination. Evidence only points to the contrary, where discrimination and singling out of AAPI women for government surveillance and control over their reproductive choices exist.

¹⁹² 43 PA. STAT. AND CONS. STAT. § 959(f)(1) (West 2022).

¹⁹³ *Id.*

¹⁹⁴ *Id.* § 955.

¹⁹⁵ *Id.*

