INTRODUCTION

Recently, an increasing number of anti-choice lawmakers in several states and in the United States Congress have proposed measures to outlaw abortions sought for reasons of sex selection or race. Simultaneously, anti-choice activists in multiple cities have posted anti-abortion billboards that attempt to make the case that abortion providers are recruiting African-American women for abortions in a genocidal attack against the Black community.

Although the accusations of racial genocide and gender discrimination in abortion is not new, this recent wave of activity began with U.S. Representative Trent Franks’ (R-AZ) federal bill, the “Susan B. Anthony and Frederick Douglass Prenatal Discrimination Act,” introduced in 2008. This bill – and those state bills modeled on it that have followed -- proposed prohibiting sex selective and “race selective” abortions. Setting the tone for this battle, Representative Franks claimed (despite his voting record to the contrary) to be troubled by race and gender discrimination and race-based violence, and thus sought to “prohibit discrimination against the unborn on the basis of sex or race.”

This report provides an overview of the recent activity in the areas of race and sex selection in abortion fights, and includes analysis of how this issue has evolved and likely trends for the future. We believe that both the legislation and billboards are part of a larger effort by anti-choice groups to improve their public image and appeal to new audiences by claiming that they seek gender equity and racial justice. Integrating arguments about race and gender is an extension of anti-choice rhetoric that argues for “protecting” women who seek abortion. While this is not the only strategy in the toolkit of attacks against women and abortion, it does require we pay careful attention to our strategies and messages so that as a reproductive rights and justice movement we fight this issue on our own terms, not theirs.
BACKGROUND

Although Rep. Trent Franks’ bill on race and sex abortion bans has not been reintroduced in Congress since 2009, legislation on sex selection and in some cases race selection has popped up in several states. Illinois and Pennsylvania have had laws on the books for many years related to sex-selective abortions, while Oklahoma and Arizona passed laws recently. Arizona’s 2011 law is the first to include the peculiar new “race selection” restriction, making it a felony to perform an abortion performed because of the race of the future child or the parent. In all cases, this type of legislation seeks to draw a line between acceptable and unacceptable reasons for having an abortion, and undermines an individual woman’s right to make a personal and private reproductive health care decision.

The complex racial dimensions of these legislative efforts and billboard campaigns have posed important challenges for reproductive rights and justice advocates. This issue requires reproductive health, rights, and justice advocates to engage with difficult wedge issues like sex discrimination and racial disparities in reproductive health.

The issue of sex selection is often perceived to be of concern only in Asian countries with demographic disparities in the number of girls and boys being born. However, son preference, gender stereotyping and gender bias are evident in most societies, including in the United States. The pervasive son preference in some societies that leads to reproductively selecting for boys is blamed on culturally-specific reasons including the elevated social status of men, the ability of sons to carry on the family name and perform certain cultural rituals, men’s ability to contribute more to family income, and traditions that sons care for aging parents. In many Asian societies, and now in some Eastern European countries, explicit son preference has translated into visible sex ratio disparities in the population, with conspicuously more boys born than girls. Given these developments, and the general belief that sex selection is a predominantly Asian issue, banning providers from performing sex-selective abortions in the United States would undoubtedly mean increased scrutiny of Asian-American women seeking reproductive health care and abortion services, and further racial stereotyping of Asian and immigrant women.

In addition to the racialized impact of sex-selective abortion bans, so-called “race selection” abortion bans raise a host of serious concerns. Race selection is a concept that appears to have been wholly invented by anti-choice forces seeking to cloak abortion bans in rhetoric about racial justice. It is not possible to test a fetus or a pregnancy for race. The meaning of “race selection” is fuzzy – anti-choice organizations describe women pressured or choosing to abort because of the race of the father. They also use data about the racial disparities in abortion rates between Black and White women as evidence to support their claim that abortion hurts African-Americans and that abortion providers specifically target African-American communities. Their solution to these claims is to defund Planned Parenthood clinics and other abortion providers.
Regardless of these over-the-top claims by conservatives, the result of “race selection” legislation would be abortion providers pressured to question women of color – particularly African-American women – about why they are having an abortion, an intrusive new practice that would clearly affect the ability of African-American women to access reproductive health care. And it would make abortion providers more vulnerable to lawsuits and less inclined to provide abortion services.

Even as legislation has spread, anti-choice organizations have paid to erect billboards in multiple cities proclaiming, “The most dangerous place for an African-American is in the womb.” In their messaging around these billboards, anti-choice advocates claim that the presence of Planned Parenthood clinics and other abortion providers in African-American neighborhoods is a part of “genocidal” conspiracy aimed at eugenically reducing the number of Black children born.

Most recently, anti-choice groups’ campaign of billboards tried to target the Latina/o community in Los Angeles with billboards proclaiming, “El lugar mas peligroso para un Latino es el vientre de su madre/The most dangerous place for a Latino is in the womb.” Three of these billboards went up, but came down very quickly. Nevertheless, advocates expect that anti-choice forces will continue to attempt to link abortion to genocide in the Latina/o community.

In both the legislation and in the billboard campaigns, conservative anti-choice legislators and activists are attempting to claim ownership of the moral high ground by arguing they are fighting against race and sex discrimination and fighting for human rights. They want to appeal to some progressive communities and foster division among social justice groups by claiming the rhetoric of gender justice, civil rights and racial equality in the name of encouraging broader support for restricting abortion. The truth, of course is that this state or federal legislation will penalize providers of reproductive health care, and will restrict women's access to abortion services, with a particular impact on women of color.

The challenge for the reproductive rights and justice community has been to effectively counteract the rhetoric of our anti-choice opponents and to defeat these bills while maintaining a nuanced and workable perspective on sex selection, race discrimination, and access to reproductive health care. Despite the lofty rhetoric of equality and justice appropriated by the sponsors of legislation with names like the “Susan B. Anthony and Frederick Douglass Prenatal Discrimination Act,” these cynical efforts do nothing to address the serious and complex concerns raised either by the practice of sex selection or by racial disparities in health care. Assessing the lessons learned will help us reaffirm our commitment to racial and gender equality and work towards better access to reproductive health care, particularly in marginalized communities of color.
There are currently four states with laws on the books banning sex selective abortions, and no federal law in this area. Two states, Illinois and Pennsylvania, have decades-old laws on the books related to sex selection: Illinois has a sex selection ban that was passed in 1975, and Pennsylvania’s passed in 1989—both ban abortions performed “solely” for sex selection. In 2009 and 2010, anti-choice legislators in Georgia, New Jersey, Arizona, Mississippi, Idaho, Michigan, and Minnesota introduced sex selection or “sex and race selection” anti-choice legislation. And, in 2011, legislation in five additional states has been introduced.

When U.S. Representative Trent Franks (R-AZ) introduced the federal 2009 “Susan B. Anthony and Frederick Douglass Prenatal Discrimination Act,” it became a new legislative model for anti-choice lawmakers around the country. The bill would have punished by fine or imprisonment for up to 5 years anyone who knowingly performed an abortion sought based on the sex or race of the child or parent. It also prohibited coercing a woman into having such an abortion, and gave some rights to sue for damages to the father of the future child if married to the mother, or to the woman’s parents if she is under 18. The bill text asserts that sex-selective abortions in the United States "have the effect of diminishing the representation of women in the American population, and therefore, the American electorate," and that the high rates of abortion among African American women amount to "race selective abortion" diminishing the number of minorities in society.

Before Franks’ bill emerged, “typical” legislation on sex selection—such as the laws in Illinois and Pennsylvania—looked different. There was no mention of “race selection” and the ban on abortions performed “solely” for sex selection meant that for the law to apply, the sex of the fetus would have to be the only reason the woman is seeking the abortion.

In 2009, Oklahoma passed a law banning sex-selective abortions as part of a package of anti-choice legislation, but a state court struck down the package based on the state constitution’s “single subject” rule. Later, the legislature passed the legislation as a separate measure and this legislation, which also bans abortions performed “solely” for sex selection, is now law.

In 2010, reproductive health, rights, and justice advocates in the state of Georgia successfully defeated a bill that sought to ban not only sex selection but also “race selection” – a bill clearly modeled on the Franks legislation.

The ultimate defeat of the Georgia law in 2010 included some surprising twists and turns. Although the legislative debate initially focused on the racial issues raised by the bill, it ultimately switched to the question of sex selection, with legislators asking numerous questions about whether there was any evidence of actual sex-selective abortion occurring in Georgia. In addition, as the debate progressed, some anti-choice organizations were reluctant to support the bill at all, because they felt it was not restrictive enough to pass a bill that only banned a subgroup of abortions. Conversely, the anti-choice Speaker of the Georgia House of Representatives was concerned that the
bill was unconstitutional and wanted to consider a different approach that would hold up to a constitutional challenge in the courts. Throughout the debate there were more than 80 anti-choice billboards posted in Atlanta, sponsored by “Toomanyaborted.com” paid for by the Radiance Foundation and Georgia Right to Life. The billboards proclaimed “Black Children are an Endangered Species.”

In the end, the final version of the bill considered in Georgia morphed into legislation not specific to sex and race. Instead, the bill made it a crime to "coerce" a woman into having any abortion. Yet that bill never received a vote and did not re-emerge in 2011. It was a tremendous victory, and a tribute to reproductive health, rights, and justice advocates in that states, that the Georgia legislation did not pass.

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In 2011, the legislative story began in Arizona. Thanks to an extreme anti-choice legislature and Governor, Arizona became the first state in the country to pass legislation aimed at “sex and race selection” abortions. Under Arizona’s law, any person who knowingly performs or coerces, solicits or accepts money for an abortion based on the sex or race of a fetus is guilty of a felony. Under the law, doctors who perform such abortions face felony charges, prison terms and could lose their medical licenses. Under some circumstances the father of the baby or the parents of the woman can sue the doctor for performing an abortion for sex or race selection. Providers will have to sign affidavits stating the reason for an abortion is not the fetus' race or sex. Importantly, the new Arizona law lacks the requirement that the abortion be performed “solely” because of race and sex: in other words, if sex or race is even one aspect of the woman's decision, the abortion is illegal.

The Arizona law is certainly a “win” for anti-choice forces. However, it may have been a win unique to the extreme anti-choice nature of both houses of the state legislature and the extremely anti-choice governor. According to Bryan Howard, CEO of Planned Parenthood of Arizona, it was not clear initially that there was widespread support for the legislation among the usual anti-choice forces in Arizona. A powerful anti-choice right wing organization, the Center for Arizona Policy, did not push the bill. Indeed, even after the final vote on passage, the Associated Press reported that the organization declined to comment because they “were not involved.”

In addition to Arizona, legislators in 5 states introduced related legislation in 2011:

**In West Virginia,** the proposed legislation bans abortion based on the sex of the fetus. Similar legislation has long been a fixture in the West Virginia legislature but has never moved.

**In Rhode Island, Massachusetts** and **New York,** legislation was similar to the laws passed in Illinois, Pennsylvania, and Oklahoma—abortions performed “solely” for sex selection are banned with no mention of race. In these states, the legislature is adequately pro-choice and controlled by pro-choice leadership such that there is no expectation that the legislation would pass or move. In all three states, the legislation appears to have been introduced by a small anti-choice minority, possibly as an experiment with new messages as a way to reach
more people. For example, in New York, the legislation was introduced with great fanfare right before a big anti-choice lobbying day.

In Kansas, an omnibus anti-choice bill includes a provision banning abortion solely because of the race or sex of the fetus. Kansas appears to be unusual in including both the “solely” requirement and a prohibition on abortion because of the race of the fetus.

In 2011, Representative Frank has not reintroduced his federal bill. However, the issue of sex selection has emerged in the context of the Foreign Relations Reauthorization bill. The House Foreign Affairs Committee recently added troubling language to its version of the bill, that would declare as United States Policy that sex-selective abortion is a “human rights violation” and require information on the incidence of sex-selective abortion in the State Department’s annual report on country human rights practices. Anti-choice Representative Jeff Fortenberry (R-NE) proposed the language. The future of this amendment is uncertain. The Reauthorization bill itself is riddled with other anti-choice language including reinstating the global gag rule and is unlikely to become law in its current form. In the Senate, the Senate Foreign Relations Committee drafted a bill that states the “United States Government remains committed to programs that seek to eliminate sex-selective abortion, coercive abortion, and involuntary sterilization.”

BILLBOARDS

Legislation has been only part of the story. Beginning with the billboards that accompanied the legislative campaign in Georgia in 2010, reproductive health, rights, and justice groups have faced numerous billboard campaigns around the country attempting to link abortion with genocide of particular racial groups, primarily of African-Americans, and most recently Latinos.

In Atlanta, Georgia, the first wave of billboards featured a photo of a young black boy, with the words “Black Children are an Endangered Species” above his face, tapping into powerful fears about historical and current medical mistreatment and eugenic campaigns against African-Americans. The billboards directed viewers to a website hosted by the Radiance Foundation and funded by Georgia Right to Life, the primary supporter of the legislation. Subsequent billboards have used similar images of black babies with the words, “Black and Unwanted” or “Black and Beautiful.” Although the original Georgia billboards were clearly part of a coordinated effort that included the Georgia sex and race selection legislation, other billboard campaigns have not necessarily been in states with legislation likely to move towards passage.

In Houston, Milwaukee, Chicago, New York City, Los Angeles and Oakland, anti-choice groups paid to post billboards spreading their message that women of color who seek abortions are making ill-informed decisions under pressure by abortion providers who have genocidal agendas for their communities. These inflammatory billboards contributed to a sense that the racial and ethnic dimensions of the sex and race selection legislation
would grow. But thanks to the activism and organizing of advocacy groups and community members, some of these racist billboards have come down quickly, particularly in New York and Oakland.

In New York, a Texas group called “Life Always” paid for a billboard featuring a young black girl and the provocative message “The most Dangerous Place for An African American is in the Womb.” The group promised that the billboard would be the beginning of a national campaign against a “genocidal plot.” However, after reproductive health, rights, and justice organizations and community activists expressed outrage both to the advertising company and to the occupants of the building where the billboard appeared, the billboard came down within a week.

In Oakland, CA, the campaign of at least 60 billboards proclaiming “Black and Beautiful” directed the public to a California-specific website of “Toomanyaborted.com” sponsored by the Radiance Foundation. The Oakland billboards appeared to target areas of the city that are home to low-income people and people of color. However, within a few weeks, a multi-racial coalition of local, national, and community activists groups, through an intense media and calling campaign, made sure these billboards came down.

**ANALYSIS**

Anti-choice forces clearly believe that both the legislation on race, abortion and sex selection and the billboard campaign on race, abortion and genocide are extremely useful components of their current message and strategic plan. Conservative legislators and activists alike are using this issue to advance their pitch that restricting or banning abortion protects women. They also seek to divide social justice groups while appropriating the language of racial justice, women’s rights, and human rights in order to strengthen their moral appeal. They hope that both strategies will attract new constituencies, including more racially diverse, younger, even self-described “progressive” voters and supporters.

Their legislative agenda has had both successes and failures. In Arizona, passage of sex- and race-selective abortion ban legislation was possible because of the two extremely anti-choice houses of the legislature and an equally anti-choice governor. But reproductive health, rights, and justice advocates had a major impact when they defeated
the Georgia legislation in 2010: in 2011, legislators in Georgia and Texas have not taken up sex and race selection legislation as most observers had believed they would.

Some evidence suggests the anti-choice movement may not have embraced sex and race selection abortion bans as their best strategy. Some anti-choice state legislatures seem to have focused on other legislation such as banning abortions after 20-weeks, attacks on Planned Parenthood, and anti-choice attacks through the evolving health care system.

As discussed above, some anti-choice advocates in Georgia did not support the legislation in that state because it did not go far enough in restricting all abortions. Even in Arizona, a prominent anti-choice organization was not involved with the initial introduction of the bill and even when the bill passed declined to comment saying it was not involved with the legislation.

Anti-choice legislators often rely on groups like Americans United For Life, which includes sex selection legislation in the model legislation it provides in a lengthy guide for anti-choice legislators. (Available online at http://www.aul.org/auls-2010-model-legislation-policy-guides/). However, the model legislation does not encourage using the “race selection” issue; rather, the legislative language provided looks like the laws in place in Illinois, Pennsylvania, and Oklahoma: a ban on abortions done solely for reasons of sex-selection. The legislation also includes a ban on abortions performed for genetic abnormalities such as Down syndrome.

The drafter of the AUL model sex selection legislation notes:

“AUL is providing this model to spark and encourage discussion about the need for states to ban abortions performed for reasons of sex selection and potential genetic deformities or disabilities as identified during prenatal care or testing. This model was originally drafted as proposed federal legislation, but has been adapted for the States. However, it should not be introduced or filed in any legislature, in whole or in part, without consulting AUL.”

Indeed, although AUL lists twenty-six legislative models under the category of abortion, sex selection is listed twenty-fifth. By way of comparison, the first and newest model legislation offered by AUL is a “Joint Resolution to Promote Women’s Safety by Investigating and Defunding Planned Parenthood and other Abortion Providers.” As is perhaps obvious from the number of states who have introduced and/or passed this type of bill this year, this model Joint Resolution does not include a warning to contact AUL before introducing it like the warning attached to the sex selection model.

It also appears that anti-choice advocates are not prioritizing this issue in the United States Congress. Despite other anti-choice activity this year, Representative Trent Franks has not reintroduced the “Susan B. Anthony and Frederick Douglass Prenatal Discrimination Act” in the current Congress.

As we look ahead, it seems likely that in extremely anti-choice states with similar political situations to that in Arizona, legislation dealing with race, abortion, and sex selection will occasionally emerge and pass. However, there is clearly evidence of ambivalence within their movement about whether and how to promote these bans. Legislative activity in this area is hard to predict.

For now at least, anti-choice groups and activists seem to be at least as focused on pushing their agenda through the billboard campaigns that try to appeal to more progressive values and “protect” women from abortion. Considerable financial resources continue to pour into billboard campaigns aimed at communities of color. Anti-choice advocates attack Planned Parenthood and other providers of critical reproductive health care by invoking racism and
victimization. One group to watch in the future, The Radiance Foundation, and its leader Ryan Bomberger have played a critical role in this message campaign. Bomberger’s personal history has played a leading role in the communications plan surrounding the billboards. As his official biography on the Radiance Foundation website tells it,

“His biological mother was raped yet chose to go through 9 months of pregnancy, choosing to give him Life. He was adopted as a baby and grew up in a loving, multi-racial Christian family of 15, which gave him a great appreciation for diversity. Ten of the thirteen children were adopted in this remarkable family. He was once considered “black and unwanted” but instead was adopted and loved.”

OUR MESSAGE AND WORK

Generations Ahead has worked—and will continue to work—with reproductive health, rights and justice advocates at the federal level and in many states to fight the attempt by anti-choice forces to appropriate the language and moral high ground of fighting racism, sexism, and inequality.

We encourage advocates to acknowledge that people who work on behalf of women’s health and rights may be made uncomfortable by sex-selective practices, while stressing that bans are not the answer to what is a fundamental problem of bias and stereotype. We developed and disseminated a Message Compass for our allies in need of talking points and to demonstrate that it is possible to walk the line of defeating the legislation while discouraging sex selective practices. We also seek to make connections between these anti-choice bans and other abortion-related issue areas where communities of color in particular face attacks.

Generations Ahead first convened the “Working Group on Race, Abortion and Sex Selection (RASS)” with the National Asian Pacific American Women’s Forum and the Reproductive Health Technologies Project. We built a secure website to which more than 80 allies have access. It has become a clearinghouse of resources for reproductive health, rights, and justice advocates fighting race and/or sex selection abortion bans in states. The resources include media clips, legislative information, talking points, fact sheets, powerpoint slides, and polling

consultants such as Margaret Conway and Anat Shenker-Osario to provide this resource to our allies. For example, we encourage advocates to acknowledge that people who work on behalf of women’s health and rights may be made uncomfortable by sex-selective practices, while stressing that bans are not the answer to what is a fundamental problem of bias and stereotype. We developed and disseminated a Message Compass for our allies in need of talking points and to demonstrate that it is possible to walk the line of defeating the legislation while discouraging sex selective practices. We also seek to make connections between these anti-choice bans and other abortion-related issue areas where communities of color in particular face attacks.

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We provide state-specific information on legislation and billboard campaigns, key news articles, and opportunities for on-line information sharing and collaboration. Organizations attending RASS meetings regularly and using the website as a resource include all the major reproductive health, rights, and justice organizations in New York, Washington DC, and the Bay Area as well as Center for American Progress, Public Eye, our major funders, and several state organizations and affiliates.

In terms of state-specific communications work, starting in Georgia in 2010 Generations Ahead worked with SisterSong and SPARK Reproductive Justice Now, assisting in SPARK’s coordination with a local South Asian women’s community and providing messaging ideas for a local activist’s Letter to the Editor. We were also in close touch with Planned Parenthood of Arizona when the legislation in that state first emerged. We provided our messaging assistance to New York’s National Institute for Reproductive Health when legislators unexpectedly introduced sex selection legislation there, and helped NARAL Pro-Choice America in the development of their talking points on sex-selection abortion bans and race-selection abortion bans in preparation for anticipated battles in Texas and elsewhere.

We have worked hard to demonstrate that we can protect women’s reproductive autonomy while acknowledging that sex selection is antithetical to women’s rights and health. It is possible to work to discourage sex-selective practices while defending women’s reproductive decision-making.

While we have been a collaborative partner and supportive ally in the national and state-level advocacy on this issue, Generations Ahead has been the lead organization raising the gender and racial justice concerns with sex selection and assisting allies in understanding and developing their internal organizational positions. Working in collaboration with the National Pacific American Women’s Forum (NAPAWF) and Asian Communities for Reproductive Justice (ACRJ), we developed a "Toolkit" called "Taking a Stand: Tools for Action on Sex Selection" which provides reproductive rights and justice advocates with the tools they need to consider the issue internally and develop advocacy strategies to face this issue head on. We have worked hard to demonstrate that we can protect

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**Message Compass - Sex Selective Abortion Bans**

**Acknowledge discomfort**

Many of us are uncomfortable with the idea of abortion for sex selection — and the underlying assumptions that might lead to valuing a child more because of his or her sex.

**Ban is not the solution**

Banning abortion for certain reasons is never the solution. It would put every woman’s and family’s reproductive health decision making at risk through intrusive and unnecessary regulations.

**Vision**

We can discourage sex selective practices, promote strong families and healthy parenting while protecting individual and reproductive decision-making.

**Solution: decrease gender stereotypes**

For those who are concerned about sex selective practices what we can do is to work together to decrease gender stereotypes that can lead to such strong boy or girl preference.

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For reproductive health, rights, and justice organizations, the emergence of the issue of sex selection and race selection has brought a flurry of activity. We should be proud of the defeat of legislation in Georgia and pleased that these bans seem to have fallen out of favor for the moment with the anti-choice movement. With recent success bringing down racist billboards, it is possible that the onslaught of attacks is lessening. Yet we must remain vigilant: as we move forward, we expect that these difficult issues may continue to pop up in the media and possibly in legislation. Generations Ahead will continue to provide resources and a secure website to reproductive health, rights, and justice groups through our working group and website.

Recently, several key allies—Trust Black Women, National Latina Institute for Reproductive Health/Reproductive Health Technologies Project, and California Latinas for Reproductive Justice—have produced valuable research exploring attitudes and messages that resonate about abortion in communities of color. There is plenty of work to do to reaffirm our commitment to racial equality and fight for access to reproductive health care especially for marginalized communities. The continuing challenge for our movement and allies will be to fight any related efforts against women and communities of color, however and whenever they appear.

We must also keep in mind that sex-selective abortion bans do nothing to address the real underlying societal issues that give rise to sex selection practices – practices that trouble us all as advocates for social justice and equality. We must work to change the context in which parents seek and make decisions about using sex selective technologies. Prospective parents who use sex selective procedures—whether through sperm sorting, preimplantation genetic diagnosis, or abortion—often have particular expectations of what it means to parent a boy or a girl. It can be extremely difficult to avoid the influence of societal sex and gender stereotypes in imagining what it will be like to raise a child.

We urge our allies to take a broader and deeper approach to the issue of sex selection, to shift the frame of discussion around sex selection from “what kind of a child do I want” to “what kind of a parent do I want to be?”

In the face of proposed abortion bans claiming the mantle of racial and gender equality, Generations Ahead’s mission has been to fight these bans while promoting reproductive justice and autonomy. We urge our allies to take a broader and deeper approach to the issue of sex selection, to shift the frame of discussion around sex selection from “what kind of a child do I want” to “what kind of a parent do I want to be?” Supporting healthy parenting and strong families is a critical aspect of our work as we all strive to help our children grow up safe, confident, and proud of who they are.